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Jayanth K. Krishnan

Indiana University Maurer School of Law, jkrishna@indiana.edu

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Public Interest Litigation in a Comparative Context

Jayanth Kumar Krishnan*

INTRODUCTION

Scholarship on interest group litigation in the United States is well documented. Some observers focus on the filing of lawsuits by interest groups.¹ Others examine amicus brief submissions by groups.² Still others look at, among other things, whether and why interest groups participate in class action cases.³ The recent wave of writings on interest group litigation is not restricted to simply the United States. In places such as Canada,⁴ Britain,⁵ the Nether-

* Assistant Professor of Law, William Mitchell College of Law, St. Paul, MN. B.A., J.D., Ohio State University; M.A., Ph.D., University of Wisconsin-Madison. For their comments, feedback, and advice, I would like to thank Bert Kritzer, Marc Galanter, Chuck Epp, Marcia Gelpe, Frances Raday, Yoav Dotan, and Yael Yishai. For the institutional support I received, I would like to thank the University of Wisconsin-Madison, the Hebrew University Law Faculty, and the Tel Aviv University Law Faculty. This study was funded by grants from the University of Wisconsin-Madison, the Council for American Overseas Research Committee, and the Joint Center of International Studies.

¹ See, e.g., Lee Epstein & C.K. Rowland, *Debunking the Myth of Interest Group Invincibility in the Courts*, 85 AM. POL. SCI. REV. 205 (1991); LEE EPSTEIN, *CONSERVATIVES IN COURT* 68 (1985).

² See, e.g., James Spriggs & Paul Wahlbeck, *Amicus Curiae and the Role of Information at the Supreme Court*, 50 POLITICAL RESEARCH QUARTERLY 365 (1997).

³ See, e.g., Kim Lane Scheppele & Jack L. Walker, *The Litigation Strategies of Interest Groups*, in *MOBILIZING INTEREST GROUPS IN AMERICA* 180-81 (Jack L. Walker, ed., 1991) [hereinafter Scheppele & Walker, *Litigation Strategies*].

⁴ See, e.g., CHARLES R. EPP, *THE RIGHTS REVOLUTION: LAWYERS, ACTIVISTS, AND SUPREME COURTS IN COMPARATIVE PERSPECTIVE* 171-96 (1998) [hereinafter EPP, *RIGHTS REVOLUTION*]; Charles R. Epp, *Do Bills of Rights Matter: The Canadian Charter of Rights and Freedoms*, 70 AM.

lands,⁶ and Israel,⁷ scholars note that organized interests are using the courts to further their public policy goals.

But what actually affects whether or not interest groups use this tactic of litigation as a technique to achieve policy objectives? Traditionally, two explanations have been offered to answer this question. One explanation suggests that the degree of institutional accessibility to courts affects whether or not groups will use litigation as a public policy tactic.⁸ Supporters of this argument often point to the United States, where during the 1960's and 1970's, the federal judiciary broadened the concept of standing to provide more organizations with greater accessibility to the courts.⁹ The passage of certain federal and state laws during this time also removed several institutional obstacles that groups had historically faced when filing cases in court. These new laws, for example, made it easier for groups to sue and collect costs from the government for infringing on their constitutional rights.¹⁰

POL. SCI. REV. 766 (1966); F.L. MORTON, PRO-CHOICE V. PRO-LIFE: ABORTION POLITICS AND THE COURTS IN CANADA 220-21 (1993).

⁵ See e.g., EPP, RIGHTS REVOLUTION, *supra* note 4, at 140-42.

⁶ See e.g., Susan Olson, *Comparing Women's Rights Litigation in the Netherlands and the United States*, 28 POLITY 189 (1995).

⁷ See e.g., Yoav Dotan, *Judicial Rhetoric, Government Lawyers, and Human Rights: The Case of the Israeli High Court of Justice During the Intifada*, 33 LAW & SOC'Y REV. 319 (1999) (discussing, in particular, the litigation patterns of the Palestinian movement).

⁸ Scheppele & Walker, *supra* note 3, at 165.

⁹ See e.g., STEPHAN L. WASBY, THE SUPREME COURT IN THE FEDERAL JUDICIAL SYSTEM 172 (4th ed. 1993); RICHARD POSNER, OVERCOMING LAW 64 (1995); DAVID M. O'BRIEN, STORM CENTER: THE SUPREME COURT IN AMERICAN POLITICS 212-17 (3rd ed. 1993) (discussing how the Warren Court expanded standing requirements while the Burger Court limited standing in certain cases); KAY LEHMAN SCHLOZMAN & JOHN T. TIERNEY, ORGANIZED INTERESTS AND AMERICAN DEMOCRACY 373-76 (1986). For case law that observers often point to see, *Association of Data Processing Serv. Organizations v. Camp*, 397 U.S. 150 (1970) (broadening standing requirements to sue); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971) (allowing public interest groups to use federal legislation to challenge the activities of a federal agency).

¹⁰ See EPP, RIGHTS REVOLUTION, *supra* note 4, at 60-61 (included among these statutes were the Civil Rights Act of 1964 and the Civil Rights

A second common explanation is referred to as the resource-based theory. This alternative perspective states that it is group-resources that primarily affect whether or not litigation is selected.¹¹ Again, the United States is frequently cited as support for this argument; the use of litigation by American groups has been shown to vary depending on the availability of resources.¹²

In this article, I test the robustness of these two theories on an environment where interest group litigation is a relatively recent phenomenon. I use Israel as my empirical case study. Since the 1980's, many different types of Israeli interest groups have sought to redress their grievances in front of the country's highest court.¹³ One possible explanation for why this has occurred is because during the 1980's the Israeli Supreme Court liberalized the requirements for gaining standing as a petitioner.¹⁴ In addition, the costs for using litigation in Israel have remained relatively low during the past twenty years.¹⁵ And, a number of Israeli interest groups

Attorneys' Fees Award Act of 1976); See also *Robert v. Percival & Geoffrey P. Miller, The Role of Attorney Fee Shifting in Public Interest Litigation*, 47 LAW & CONTEMP. PROBS. 233 (1984). Compare *Buckhannon Board & Care Home v. West Virginia*, 532 U.S. 598 (2001), (recently holding that plaintiffs suing under the Fair Housing Amendments Act of 1988 and the American with Disabilities Act of 1990 must actually be a "prevailing party" before their attorneys may collect fees from the opposing side).

¹¹ Scheppele & Walker, *supra* note 3, at 176, 181.

¹² FRANK BAUMGARTNER & BETH LEECH, BASIC INTERESTS: THE IMPORTANCE OF GROUPS IN POLITICS AND IN POLITICAL SCIENCE 143 (1998).

¹³ Yoav Dotan, *Do the "Haves" Still Come Out Ahead? Resource Inequalities in Ideological Courts: The Case of the Israeli High Court of Justice*, 33 LAW & SOC'Y REV. 1059, 1063-64 (1998).

¹⁴ See, H.C. 217/80, *Segal v. Minister of Interior*, , 34 (4) P.D. 429, 443 (acknowledging the standing of public petitioners in environmental cases); H.C. 1/81, *Shiran v. Israeli Broadcasting Authority*, 35 P.D. 365 (acknowledging that emotional injury may be a basis for standing); H.C. 910/86, *Ressler v. Minister of Defense*, , 42 (2) P.D. 441.

¹⁵ Dotan, *supra* note 7, at 323.

since the 1980's have also seen a growth in resources.¹⁶ These resources most notably are from contributions made by the New Israel Fund, a non-governmental organization known for donating various types of resources to diverse social and political groups.¹⁷ Perhaps then it is only intuitive to believe that the rise in Israeli litigation rates by interest groups is a result of favorable institutional conditions and increased resources.¹⁸

As I demonstrate, however, greater access to courts and resources are not the only factors that affect whether or not Israeli interest organizations litigate. Indeed both institutional factors and resources may matter, but as I show there are other elements that are as (if not more) important to the decision-making calculations of interest group policy makers. Whether or not organizations opt for litigation depends upon what I call a set or *taxonomy of interest group leadership goals*. These goals of interest group leaders (which I discuss in detail below) are oftentimes subtle and multi-dimensional in nature. The empirical evidence I provide on Israel adds a new perspective to the growing literature on legal mobilization. This article is divided into five parts. Part I begins by detailing how interest groups in general have evolved within the Israeli political system. In this section I give a brief historical

¹⁶ Interview with (identity of official protected upon request), high ranking official, New Israel Fund, in Jerusalem, Israel (Sept. 7, 1998). See also, *New Israel Fund*, at <http://www.nif.org>.

¹⁷ *Id.*

¹⁸ For this article I focus on only one dimension of litigation, that being lawsuit participation. (The study defines lawsuit participation in the manner typically found in the interest group literature. A group is a lawsuit participant when: it files suit on behalf of its own members; represents an outside party; and/or hires an outside party to represent it in court). The reason for selecting lawsuit participation is because while the sponsorship of cases and the submission of amicus briefs are not uncommon to American interest groups that litigate, many Israeli attorneys told me that the same is not true of Israeli interest groups. Lawsuit - or what is oftentimes referred to as petition - participation by Israeli interest groups remains the main form of judicial participation. Throughout the course of the article, I use the terms lawsuit participation and litigation interchangeably.

overview and explain the context within which interest groups operate in Israel. Part II then provides an in-depth discussion of the three types of interest groups examined in this study: women's groups, environmental groups, and civil liberties groups. Additionally in this section, I offer a methodological explanation for how and why I select such "public" interest groups as my foci of analysis. In part III I discuss the various tactics these Israeli public interest groups employ when pursuing their policy goals. As I show, litigation is a tactic used by only a minority of organizations within the country.

In part IV I turn my attention to examining specifically the litigiously oriented groups in more detail. During this portion of the discussion I attempt to understand what factors affect when groups will and will not use the courts for public policy purposes. I present the two standard theoretical explanations and subsequently outline my set of hypotheses. I then use both qualitative and quantitative techniques to test the alternative theories on the empirical evidence I gathered during several extended research visits to Israel between 1998-2000. I present my findings and demonstrate that while the two standard explanations (the institutional theory and the resource-based theory) may be necessary for understanding the conditions under which groups litigate, they are not sufficient. With the addition of my *leadership goals* thesis we are better able to appreciate when groups will and will not turn to the judicial process.

Part V provides concluding thoughts on what the study's implications are for the field of public interest law, not just in Israel but also elsewhere, particularly the United States. The fact that the two standard theories used to explain organizational litigation in the United States do not apply fully when looking at Israel suggests perhaps that scholars of American law may need to reconsider what factors affect whether groups use courts for social policy purposes.

I. THE EVOLUTION OF INTEREST GROUPS WITHIN A PARTY-DOMINATED STATE

Despite some changes over the past few years, Israel remains a state that is highly centralized and party-dominated.¹⁹ Parties in Israel control the legislative and bureaucratic branches of government, and as a consequence, control the distribution of social services as well.²⁰ Parties serve as the main organizations that represent political interests; thus parties (rather than groups) are used as the vehicles for political mobilization.²¹ Parties also set much of the political agenda for the country, and the ruling party, in particular, frequently determines the degree of salience given to an issue.²² In addition, parties are present at almost every access point of influence in the political system. As one observer notes, parties are so deeply embedded both institutionally and culturally that most "native Israelis . . . [are] born into political parties."²³

With parties wielding such power and influence in Israel, it is hard to image how there exists any political space for interest groups to operate, let alone for them to litigate. But while the environment is certainly "compressed,"²⁴ it is incorrect to assert that no interest organizations are present. One powerful workers' organization that plays a major role in Israeli politics today, the *Histradut*, dates back to the pre-state period.²⁵ There are other

¹⁹ ASHER ARIAN, *THE SECOND REPUBLIC: POLITICS IN ISRAEL* 282 (1998) [hereinafter ARIAN, *SECOND REPUBLIC*]; ASHER ARIAN, *POLITICS IN ISRAEL* 206 (1989) [hereinafter ARIAN, *SECOND GENERATION*].

²⁰ Yael Yishai, *LAND OF PARADOXES: INTEREST POLITICS IN ISRAEL* 32 (1991) [hereinafter YISHAI, *LAND OF PARADOXES*].

²¹ I. GALNOOR, *STEERING THE POLITY: COMMUNICATIONS AND POLITICS IN ISRAEL* 74-77, 163-64. (1982).

²² ARIAN, *SECOND REPUBLIC*, *supra* note 19, at 141; ARIAN, *SECOND GENERATION*, *supra* note 19, at 283.

²³ Deborah Sontag, *In Close Israeli Race, Russian Voters Hold the Key*, *NEW YORK TIMES*, May 12, 1999, at A3.

²⁴ Asher Arian, *Israel: Interest Group Pluralism Constrained*, in *FIRST WORLD INTEREST GROUPS*, 190 (Clive Thomas, ed., 1993).

²⁵ ARIAN, *SECOND REPUBLIC*, *supra* note 19, at 300. See generally MARCIA DREZON-TEPLER, *INTEREST GROUPS AND POLITICAL CHANGE IN ISRAEL* 26

associations that have long histories in Israeli politics as well. For example, groups interested in issues of security and defense, agriculture, and religion have existed in the country for many years.²⁶

Being an interest group that exists in Israel is one thing; being a group that affects public policy, however, is quite another. Because of both the omnipresence and omnipotence of parties in Israel, a group has historically needed to patronize or align itself to ideologically similar parties, if it hopes to impact government decision-making.²⁷ As Asher Arian notes:

Independent groups that organize to influence policy are generally short-lived and unsuccessful unless coopted by some party-affiliated or government-affiliated group. More important, in the Israeli system the number of groups proves nothing because of their extreme inequality in terms of power. Power in the system is in the hands of leaders of the party or parties in the government coalition.²⁸

Effectively, then, group-success in affecting policy-outcomes has depended upon the types of relationships groups have with party-elites. But are groups as dependent on parties today to advance their interests as in years past? Furthermore, do groups remain primarily organized around issues relating to workers' rights, agriculture, security, and religion?

(1990). The Histadut is an organization that formed in 1920. It is the umbrella organization for workers' unions throughout the country, which represents approximately 650,000 workers. The leadership was directly affiliated with the Mapai (and then later) Labor Party until 1994. After 1994, a splinter group of Labor took control of the Histadut.

²⁶ For an insightful discussion on defense, labor, agriculture, and religious groups in Israel, see ARIAN, *SECOND REPUBLIC*, *supra* note 19, at 290-323; see also, Yael Yishai, *Civil Society in Transition*, 555 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 147, 150 (1998) [hereinafter Yishai, *Civil Society*].

²⁷ YISHAI, *supra* note 20, at 133-34.

²⁸ ARIAN, *SECOND REPUBLIC*, *supra* note 19, at 289.

During the period from 1948 to the middle 1960's interest groups were defined by and worked closely in conjunction with political parties. Political parties during this time, in particular the political party of Mapai, controlled the state to such an extent that it was often difficult to determine the lines that divided the ruling party from the state.²⁹ Interest groups that wished to achieve particular goals were completely dependent upon Mapai. Mapai determined which interests received state attention and which interests did not. Groups such as the Histradut, farmers organizations, the umbrella association representing manufacturers, and professional organizations (including medical groups, legal groups, and teachers) were involved in Mapai's political decision-making during this period; this occurred perhaps because each of these groups, along with pursuing their own interests, worked towards the party's main goal of nation-building.³⁰

From 1965 through the 1970's Mapai's ability to set the political agenda began to change, and this had important effects on Israeli interest groups. Mapai began to suffer from serious internal disputes that led to David Ben-Gurion (the party's leader and the country's prime minister from 1948-1953 and from 1955-1963) resigning from Mapai and forming a protest party known as Rafi. Mapai and Rafi eventually reconciled (although without Ben-Gurion) and together with another party, Ahudut Haavoda, formed the Labor Party in 1968.³¹ But even though Labor remained in power until 1977, there was not the type of party-dominance over the state as there had been in years past. Three forces entered the political arena which reduced Mapai/Labor's power and ultimately affected the role interest groups were to play in Israeli society.

First, there was the emergence of the opposition Gahal Bloc that included the more conservative Herut and Liberal Parties.

²⁹ See generally, BENJAMIN AKZIN & YEHEZHEL DROR, *ISRAEL: HIGH PRESSURE PLANNING* (1966); PETER Y. MEDDING, *MAPAI IN ISRAEL: POLITICAL ORGANISATION AND GOVERNMENT IN A NEW SOCIETY* (1972).

³⁰ Yishai, *supra* note 26, at 150-51.

³¹ ARIAN, *SECOND REPUBLIC*, *supra* note 19, at 113-15.

Except for a three-year period between 1967 and 1970,³² the Gahal Bloc served as a new, opposition force at the national level that emerging interest groups could turn to for support. Throughout the early 1970's Gahal's popularity steadily increased. Two other parties, the Free Center Party and La'am, asked to join Gahal, and by 1973, this enlarged opposition bloc became what is today known as the Likud party.³³ By 1977 Likud dethroned Labor and assumed power for the first time in the country's history. During the election of 1977 (and in every election since), national parties have practiced "catchall" tactics, whereby there is an appeal to much of the same constituency for support, including an interest group constituency that had been quietly growing within the country.³⁴

Second, foreign forces also affected the way Mapai/Labor controlled the political agenda, and this in turn, affected Israeli interest groups as well.³⁵ The surprise attack by the Arabs in the 1973 Yom Kippur War crippled Labor's leadership legitimacy. Some groups, such as the Movement for the Greater Israel, the Progressive Movement, and the Black Panthers³⁶ began to employ extra-legal tactics in an effort to delegitimize further the Labor Party government. The traditional idea that interest groups needed to defer to the ruling party in order to achieve their goals began to dissipate slowly.

³² *Id.* at 113. "A coalition was established between Gahal and the ruling government in light of the Six Day 1967 War. It was a sign of unity that both political blocs wanted to present to the Arabs."

³³ *Id.* at 96.

³⁴ Yishai, *supra* note 26, at 152.

³⁵ *Id.*

³⁶ *Id.* at 152-54. The Movement for the Greater Israel was a group that called for the expansion of the Israeli state. The Progressive Movement was an Arab group that demanded an independent Palestinian state. The Black Panthers were a group of Moroccan, Sephardic Jews that called for greater social welfare services from the government.

Third, Israel benefited from economic prosperity during the 1970's and early 1980's.³⁷ Among other things, the standard of living vastly improved, greater technological advancements were made, and economic growth increased. During the Israeli economic "miracle" period attitudes among the Israeli population towards issues such as the environment, women's rights, and civil liberties moved in a more progressive direction.³⁸ Of course it is incorrect to assert that prior to the period of prosperity no Israeli cared about these types of issues. After all, one of the country's most well-known environmental groups, the Society for the Protection of Nature in Israel (SPNI), dates back nearly fifty years. Yet the goal of groups like SPNI and others, such as the Council for a Beautiful Israel, was not "to challenge authorities . . . but to foster love of the country."³⁹ Similarly, women's groups generally "emphasized the fact that they were pro-Zionist and did not challenge the foundation of the social order."⁴⁰

But as time passed, many public interest groups started to pursue an agenda that directly confronted state policies. Women's groups rejected, what they perceived as, the patriarchal nature of Jewish culture.⁴¹ Abortion rights activists, in particular, forcefully sought to expand the notion of privacy within Israeli society.⁴² Certain environmental organizations began to employ more confrontational tactics such as protests, demonstrations, and even at times, violence.⁴³ In addition, organizations that were unhappy with the 1948 status quo agreement struck between Ben-Gurion

³⁷ Yael Yishai, "Old" versus "New" Politics in the 1996 Elections, in THE ELECTIONS IN ISRAEL 1996 140-141 (Asher Arian & Michael Shamir, eds., 1999); [hereinafter Yishai, *Old versus New*].

³⁸ *Id.* at 142-44.

³⁹ Yishai, *supra* note 26 at 152.

⁴⁰ *Id.* at 154.

⁴¹ Yael Yishai, BETWEEN THE FLAG AND THE BANNER 65-88 (1997) [hereinafter YISHAI, BETWEEN THE FLAG].

⁴² *Id.* at 205-30

⁴³ Interview with Megama Yeruka an environmental activist who is a leader of one of the most demonstrative organizations in the country, (Sept. 15, 1998).

and the Orthodox religious community⁴⁴ started actively to voice their disapproval with the amount of control religious parties possessed over Israeli society.⁴⁵

Between the late 1970's and early 1980's, the state responded to these agitators by excluding them from participation within the political process.⁴⁶ The party-controlled bureaucracy refused to address directly the concerns of these groups. Parties in the Knesset were equally unhelpful. In fact, in 1981 the state adopted the Law of Associations, which was a statute that required all interest organizations to be licensed by the Ministry of the Interior (MOI).⁴⁷ This law gave the MOI the ability to refuse a license to an applicant-group, when the agency believed that the organization threatened the national security or the public morale of the country.⁴⁸ Furthermore, even when the MOI licensed an organization, the organization had to abide by a number of provisions enumerated in the statute.⁴⁹

Therefore, the late 1960's, through the 1970's, and into the early 1980's was a period that transformed Israel's civil society.

⁴⁴ The status quo agreement, among other points, stated that the Orthodox community would control issues of marriage and divorce for all Jews in Israel. It also stated that the Sabbath would be a government observed holiday. Furthermore, all state institutions were to observe kashrut, and members of the Orthodox community were permitted to have a separate educational system for their children, that was to be funded by the state. For a further discussion see, MARTIN EDELMAN, COURTS, POLITICS, AND CULTURE IN ISRAEL 48-72 (1994).

⁴⁵ The types of power wielded by the Orthodox community will be detailed shortly. For a fuller account see generally, Marc Galanter & Jayanth Krishnan, *Personal Law and Human Rights in India and Israel*, 34 ISR. L. R. 101 (2001).

⁴⁶ Yishai, *supra* note 26, at 155.

⁴⁷ See *id.* at 154-55 (For a discussion of this statute in English).

⁴⁸ *Id.* According to the law, the organization may appeal the MOI's refusal to a district court.

⁴⁹ For example, an organization must keep records on its finances and membership; it must hold an annual meeting and elect a central and audit committee; it must prove that it is not undermining the state. See Yael Yishai, *Regulation of Interest Groups in Israel*, 51 PARLIAMENTARY AFFAIRS 568-78 (1998) [hereinafter Yishai, *Regulation of Interest Groups*].

The ability of Mapai/Labor to rule single-handedly and shape the political agenda ended during this timeframe. Different parties came into being, economic prosperity grew, and more interest groups emerged. Furthermore, these groups began to employ tactics that did not necessarily involve pandering to the ruling party in power. The state, in turn, responded by excluding these groups from the political process and by passing a regulatory measure that limited their autonomy.

From the mid-1980's to the present, Israeli society has seen further changes. Economically, the country's overall rate of development has remained high.⁵⁰ In addition, the state has gradually reduced its involvement in the economy. Despite the country's recent financial troubles there is still economic growth.⁵¹ Politically, in response to the repeated pressure applied from "below," the state has moved towards further including groups in government policy-making. By encouraging parties to adhere to an American primary system, and by adopting a direct election system for the prime minister's seat, the state has sought to satisfy public calls for making the government more accessible to members of civil society.⁵² As the state has become more responsive to these demands, civil society's importance to the political establishment has grown. Larger and smaller parties alike are turning to members of civil society, specifically interest groups, for political support.⁵³

Yael Yishai notes that paralleling the economic, political, and legal changes of the 1980's and 1990's has been the transformation of interest group politics in several ways. First, the sheer numbers of interest groups have multiplied. Today, there are over 30,000 registered interest groups in the country.⁵⁴ Second, there is

⁵⁰ Yishai, , *supra* note 37, at 140-42.

⁵¹ Yishai, *supra* note 26, at 155.

⁵² *Id.* at 156-57.

⁵³ *Id.* at 157.

⁵⁴ Yishai, *Regulation of Interest Groups*, *supra* note 49, at 574-75. Yishai discusses the fact that the state has not at all enforced the Law of Associations. Groups are not punished for not submitting "required" records; no group has ever been disbanded; only two, of the approximately 30,000 that exist, have been denied registration.

less group-dependence on political parties than ever before.⁵⁵ Third, interest groups are more willing to employ legal and extra-legal tactics to express their points of view.⁵⁶ Fourth, the bureaucracy is more open to interest group involvement; there is greater access to, and influence of, this important nerve-center of policy formation.⁵⁷ Fifth, the state has come to recognize interest groups—even those that it disdains—as members of the political and legal process; unlike in the late 1970's and early 1980's it has not actively excluded adversaries from either the political or legal arena.⁵⁸

Thus, the Israeli interest group arena today is a much different place than it was in decades past. This discussion has attempted to provide a brief overview of how interest groups have evolved in Israel during the past fifty years. In the next section, I outline my research design and explain the methodological reasons for focusing on the litigation strategies of women's groups, environmental groups, and civil liberties groups. I then provide information on what role these public interest organizations play within Israeli society.

II. PUBLIC INTEREST ORGANIZATIONS IN ISRAEL

A. *Research Design—Explaining Sources of Data and Selection of Groups*

For this study, I rely on several sources of data. First, important secondary law and courts studies are referenced. Second, content analysis is performed on literature produced by Israeli interest groups. Third, in-depth interview data that I collected from leaders of thirty-nine groups in Israel during visits in 1998, 1999,

⁵⁵ Yishai, *supra* note 26, at 158-59; n see also, Yael Yishai, *Three Faces of Association Politics: Interest Groups in Israel*, 40 POL. STUD.124 (1992).

⁵⁶ *Id.*

⁵⁷ *Id.* at 160; see also, Yael Yishai, *The Guardian State: A Comparative Analysis of Interest Group Regulation*, 11 GOVERNANCE 153, 170-71 (1998).

⁵⁸ Yishai, *supra* note 26 at 161.

and 2000 are used as key sources of information. Finally, I rely on responses to a brief survey I circulated; thirty-six of the thirty-nine interest groups interviewed also answered this survey.

I specifically focus on three types of Israeli public interest groups: women's groups focusing on gender equality; environmental groups focusing on pollution-prevention; and civil liberties/civil rights groups focusing on the issue of separation of religion and state. For the sake of scope and manageability, the public interest groups I examine are national (rather than purely local) organizations; they pursue their respective causes at the national levels of power. I focus on public interest groups in Israel's two main political and economic cities, Jerusalem and Tel Aviv. Unlike in the United States where groups can be easily identified by referring to *Washington Representatives*,⁵⁹ a comprehensive directory that lists interest organizations in the Washington D.C. area, in Israel no such directory exists. Groups were identified from a variety of sources, including existing directories, recommendations from lawyers and social scientists, academic books and journals, and media accounts. These three sets of groups are selected for an important methodological purpose. As I shall show below, they exhibit variation in their use of litigation which allows for inferential conclusions to be made on my purported hypotheses.⁶⁰ In addition, I examine these three sets of groups because they are today important political players in Israel.⁶¹

⁵⁹ WASHINGTON REPRESENTATIVES (2000).

⁶⁰ For an excellent discussion on selection of cases and the importance of variation, see GARY KING ET AL., , DESIGNING SOCIAL INQUIRY 129-30, 134, 214-17 (1994).

⁶¹ Some may contest my characterization of certain Israeli organizations as "interest groups." To these observers, some groups I focus on may resemble social movements or more grassroots organizations. Efforts to differentiate between interest groups and social movements have been made in the past. See generally, COMPARATIVE PERSPECTIVES ON SOCIAL MOVEMENTS: POLITICAL OPPORTUNITIES, MOBILIZING, STRUCTURES, AND CULTURAL FRAMINGS (Doug McAdam et al. eds., 1996); SIDNEY TARROW, POWER IN MOVEMENT (1994); THE DYNAMICS OF SOCIAL MOVEMENTS: RESOURCE MOBILIZATION, SOCIAL CONTROL, AND TACTICS (Mayer Zald & John McCarthy, eds., 1979). But even with such admirable attempts, the lines

Unlike in the United States where the explosion in the number of such groups occurred during the late 1960's and early 1970's,⁶² in Israel the population of voluntary organizations within civil society grew at a noticeable rate only after 1980.⁶³ The technological and industrial advancements made by Israel during this time frame modernized the economy and left many Israelis prosperous. As a result of the country's socio-economic success Israelis could afford to engage in issues involving gender equality, the environment, and civil liberties.⁶⁴

I should also note that while women's groups, environmental groups, and civil liberties groups typically are viewed as standard public interest groups, the term "public interest group" has no one set definition. As Theodore Lowi and Benjamin Ginsberg note, introductory students of government are often (incorrectly) taught that as opposed to private groups, the goals of public interest groups are to promote "the general good rather than their own selfish interest."⁶⁵ But the fact remains that the lines between public and private groups are indeed more blurred than stark. Moreover, conservative or right-leaning groups, which are not of focus in this study, may qualify as public interest groups as

often are more blurred rather than stark when distinguishing between the two. This study is not immune from the difficulties in determining whether or not Israeli groups are actually interest groups or social movements. But in order provide some definitive boundaries, interest groups for this project "represent people or organizations which share one or more common interests or ideals." GRAHAM WILSON, *INTEREST GROUPS IN THE UNITED STATES* 4 (1981). They are formal organizations that have members, publications, and leaders, and they exist primarily to influence policies and policy-makers at a given governmental level. *Id.*

⁶² See generally, RONALD INGLEHART, *CULTURE SHIFT IN ADVANCED INDUSTRIAL SOCIETY* (1993); THEODORE J. LOWI, *THE END OF LIBERALISM* (1979); DANIEL BELL, *THE COMING OF A POST-INDUSTRIAL SOCIETY* (1973).

⁶³ Yael Yishai, *The New Politics in Israel*, *POLITICS AND THE INDIVIDUAL* (2001) (unpublished manuscript on file with author); see also, Yishai, *supra* note 37 at 141-42.

⁶⁴ Yishai, *supra* note 37 at 142-44.

⁶⁵ THEODORE LOWI & BENJAMIN GINSBERG, *AMERICAN GOVERNMENT* 502 (2000).

well. Therefore, whether a group pursues the public interest certainly depends on who one asks, and any group that “[c]laims to represent *only* the public interest should be viewed with caution....”⁶⁶

B. The Groups of Focus for this Study

1. Women’s Groups

Having a historical understanding of the women’s movement in Israel is crucial for understanding the behavior and tactical choices of women’s groups today. Thus, before we specifically address what factors affect whether or not women’s groups in Israel employ litigation, it is necessary to provide a brief historical overview.

As we have stated, the women’s movement in Israel began gaining momentum in the 1970’s. Prior to this time, however, there were indeed some women’s organizations that existed. As early as 1911 women met as an organized group outside of the *Yishuv* (a settlement camp in Ottoman-controlled Palestine) to determine how best they might raise their socio-economic standard of living.⁶⁷ In 1921 the Women Workers’ Movement (WWM) was established within the Zionist-based *Histradut* trade union.⁶⁸ One year before the establishment of the WWM another group known as the Federation of Hebrew Women emerged. (This Federation

⁶⁶ *Id.*

⁶⁷ DEBORAH BERNSTEIN, THE STRUGGLE FOR EQUALITY: URBAN WOMEN WORKERS IN PRE-STATE ISRAELI SOCIETY 20-25 (1987).

⁶⁸ *Because We Care: Movement of Working Women & Volunteers* (Brochure Published by Na’amat). The Women Workers’ Movement was the predecessor to Naamat. The Women Workers’ Movement changed its name to Naamat in 1976; Naamat still exists today as part of the Histradut (brochures on file with author). See <http://www.naamat.org> (for more detailed information).

was later absorbed by the Women's International Zionist Organization (WIZO) in 1933).⁶⁹

Other smaller groups also existed prior to the creation of the Israeli state. Groups such as the Women's Society and Union of Hebrew Women for Equal Rights in Eretz Israel, championed political equality for women.⁷⁰ But the overall impact of these groups on society was limited. Barbara Swirski notes that the attitudes of the time, coupled with the dominance of patriarchal interpretations of Judaism prohibited women in pre-state Israel from being recognized as equal to men.⁷¹

Following the creation of the Israeli state, women's organizations were only mildly successful at implementing changes. The dominant mentality immediately after independence was to consolidate and strengthen the identity of the nation.⁷² Issues that were not directly related to nurturing this nascent country (such as gender equality) were placed aside for the time being. Furthermore, organizations such as the WWM and WIZO were co-opted by the ruling structure. Both groups—the former with its affiliation to the dominant political party in power and the latter with its ties to more conservative, wealthier elements of Israeli society—did not pursue a direct assault on the governing system.⁷³ Instead, these and other similarly situated organizations

⁶⁹ Information from Women's International Zionist Organization's historical brochures (brochures on file with author). See <http://www.wizo.org/english/index.asp>; See *The 1998 World WIZO Plenary*, 283 WIZO REV. (1998); *Israel's 50th Anniversary*, 284 WIZO REV. (1998); *1998 WIZO Aviv Seminar*, 285 WIZO REV. (1998); see also, BRANA SIMON, *WOMEN AND JERUSALEM: 300 YEARS* (1995) (Published by Women's International Zionist Organization); MARK H. GELBER, *THE JEWISH FAMILY* (1994) (Published by Women's International Zionist Organization); *The Voice of Life* (Published by Women's International Zionist Organization).

⁷⁰ YISHAI, *supra* note 41 at 62.

⁷¹ Barbara Swirski, *Israeli Feminism New and Old*, in *CALLING THE EQUALITY BLUFF: WOMEN IN ISRAEL* 285-94 (Barbara Swirski & Marilyn Safir eds., 1991).

⁷² Yishai, *supra* note 26 at 150-51.

⁷³ YISHAI, *supra* note 41 at 63.

promoted a strong work-ethic, nationalist ideals, and family values.⁷⁴ Note, these groups claimed not to have abandoned their commitment to women's equality; rather they argued that their methods were more non-confrontational in nature.⁷⁵

Following the Six Day War in 1967 Israel witnessed a wave of (primarily American) immigrants making *aliyah* to the holy land.⁷⁶ Many of these newly arriving individuals were women who brought with them strong feminist ideological tendencies. The economy was also progressing steadily, and although post-material ideals at that time had not penetrated Israeli society as it had in the West, there was still a sense of revival within civil society.⁷⁷ During the next two decades more women's groups emerged. Various women's peace organizations were established;⁷⁸ battered women's shelters and rape crisis centers were set up throughout the country; and an important grassroots lesbian-rights organization was founded.⁷⁹

It is misleading, however, to infer that the increase in women's groups over the past twenty years has lead to major, substantive changes for women. In fact, many women in Israel continue to face discrimination in three specific areas: employment; abortion; divorce.⁸⁰ First, in terms of employment opportunities, while there are a number of statutes that theoretically protect the rights of women, women nevertheless are unequal actors in the workforce. There is wage-inequality between the sexes, and there are de facto ceilings on how high women may

⁷⁴ *Id.*

⁷⁵ Yishai, *supra* note 26 at 153.

⁷⁶ See generally, KEVIN AVRUCH, AMERICAN IMMIGRANTS TO ISRAEL: SOCIAL IDENTITIES AND CHANGE (1981).

⁷⁷ YISHAI, *supra* note 41 at 63.

⁷⁸ Interview with J. Svirski, director of Beit-Shalom (Daughters of Peace), Jerusalem, Israel (Sept. 27, 1998).

⁷⁹ YISHAI, *supra* note 41 at 83.

⁸⁰ Frances Raday, *The Concept of Gender Equality in a Jewish State*, in CALLING THE EQUALITY BLUFF 18-28 (Barbara Swirski & Marilyn Safir, eds., 1991)

advance within the workplace.⁸¹ Furthermore, government agencies are not provided with sufficient authority to deal with such gender-discrimination claims.⁸² And there is a cultural and attitudinal barrier permeating much of Israeli society which refuses to recognize women as equal citizens capable of performing equal work.⁸³

Second, many women argue that the freedom to control their own bodies is inhibited by the patriarchal state structure. Performance of abortion in Israel is a controversial issue. In 1977, the Knesset (Israel's parliament) passed a restrictive law regarding abortion, although within this particular law certain exceptions were provided.⁸⁴ Abortions could be performed if approved by a state oversight committee. The oversight committee, according to the law, was to take into consideration: "the age of the woman, her health, marital status, and illegal circumstances surrounding the pregnancy (i.e. rape, incest)." An additional provision, known as the Social Clause, authorized committees to approve abortions on the basis of difficult socio-economic conditions surrounding the woman or her family."⁸⁵

⁸¹ Dafna Izraeli, *Women and Work: From Collective to Career*, in CALLING THE EQUALITY BLUFF 165-77 (Barbara Swirski & Marilyn Safir eds., 1991).

⁸² Frances Raday, *Women, Work and the Law*, in CALLING THE EQUALITY BLUFF 178-86 (Barbara Swirski & Marilyn Safir eds., 1991)

⁸³ See generally Frances Raday, *Equality of Women Under Israeli Law*, 27 JERUSALEM Q. 81 (1983); VICKY RANDALL, *WOMEN AND POLITICS: AN INTERNATIONAL PERSPECTIVE* (1987); Uri Ram, *Emerging Modalities of Feminist Sociology in Israel*, 8 ISRAEL SOC. SCI. RES. 51 (1993); YISHAI, , *supra* note 41 at 161-74; Dafna Izraeli and Ephraim Tabory, *The Political Context of Feminist Attitudes in Israel*, 2 GENDER & SOC'Y 463 (1988).

⁸⁴ Noga Morag-Levine, *Imported Problem Definitions, Legal Culture, and the Local Dynamics of Israeli Abortion Politics*, in ISRAEL: THE DYNAMICS OF CHANGE AND CONTINUITY 229-30 (eds., David Levi-Faur, Gabriel Sheffer, and David Vogel, 1999) [hereinafter Morag-Levine, *Imported Problems*]; Noga Morag-Levine, *Abortion in Israel: Community, Rights, and the Context of Compromise*, 19 LAW & SOC. INQUIRY 313 (1994); see also, YISHAI, , *supra* note 41 at 205-22.

⁸⁵ Morag-Levine *Imported Problems* at 230.

Under pressure from the Orthodox Jewish community, the Knesset in 1980 removed this Social Clause from the statute.⁸⁶ Since 1980, the abortion law has been a point of conflict between feminists who seek fewer restrictions on a woman's right to choose, and religious activists who wish to limit further the ability of women to have an abortion.⁸⁷

Third, Israel's "personal law" structure, or *millet* system, is seen as severely limiting the rights of women.⁸⁸ In Israel, personal law today encompasses two areas of family law: marriage and divorce.⁸⁹ Civil law states that matters of marriage and divorce are to be held within the jurisdiction of each recognized religious community in the country. Hence, Jews are governed by rabbinical courts; Muslims are governed by Islamic, *Shari'a* courts; Druze are governed by Druze courts, and so on.⁹⁰

For Jews, in particular, the rabbinical courts are administered by Orthodox Jewish rabbis who apply Jewish religious law, or *Halachah*.⁹¹ The inequality Jewish women face is most explicitly seen in terms of divorce proceedings. It is true that divorces are permitted by Jewish law, but rabbinical courts

⁸⁶ *Id.*

⁸⁷ Although interestingly, there were some leaders of certain women's groups who told me that obtaining an abortion in Israel, even with these restrictions, is not difficult.

⁸⁸ The term *millet* comes from the Ottoman Empire and it refers to a system whereby the Turks allowed the various religious communities within their empire to govern matters relating to family law. See, Galanter & Krishnan, *supra* note 45; also see EDELMAN, *supra* note 44 at 52.

⁸⁹ The definition of personal law has undergone changes over the years. During the time of the Ottoman Empire, personal law included marriage and divorce, as well as maintenance, inheritance, guardianship, legitimation, incompetency, adoption and burial. During the British Mandate, personal law was narrowed to include only marriage divorce, alimony, and succession. In 1953 the Israeli Knesset further narrowed personal law to include only marriage and divorce. See EDELMAN, *supra* note 44 at 51-54.

⁹⁰ See, Galanter & Krishnan, *supra* note 45.

⁹¹ *Id.* In a deal known as the "status quo" agreement struck between the secular Zionist government of Ben-Gurion and the religious parties of the time, it was decided that the Orthodoxy would be the governing authorities in matters relating to marriage and divorce. See also *infra* note 114.

strongly favor preserving marriages. Rabbinical courts continue to insist that the husband actually deliver a formal divorce decree, known as a *get*, to his wife in order to finalize the divorce.⁹² Even where a wife receives approval from the rabbinical court to divorce her husband, if the husband does not deliver the *get*, there is no divorce. Under Israeli state law, the wife may ask the Attorney General to demand that the husband appear in front of a (state) district court to justify why he refuses to provide a *get*.⁹³ A husband may even be jailed by the district court in order to coerce the delivery of the *get* if the court is dissatisfied with the husband's explanation. But there are known situations when, even after being jailed, the husband refuses to issue a *get* to his wife.⁹⁴ In these cases, the wife is left to live her life as an *agunah* (a "tied" woman⁹⁵), and the repercussions on women are severe. Rabbinical courts prohibit an *agunah* from re-marrying. If the *agunah* has children as a result of a new relationship, her children are labeled as *mamzerim* (bastards) by the rabbinical courts. According to the rabbinical courts, *mamzerim* in Israel are only permitted to marry other *mamzerim*.⁹⁶ Not surprisingly, many Jewish women in Israel see the millet system as highly restrictive on their civil rights.

Israeli Arab women who are Muslim also face forms of inequality with respect to divorce proceedings. Although evidence exists that Muslim women typically receive alimony payments upon a divorce,⁹⁷ the circumstances under which Israeli Muslim women may petition for a divorce are restrictive.⁹⁸ Furthermore,

⁹² Galanter & Krishnan, *supra* note 45 (I have been told by Rabbinical scholars that Jewish law states that the wife must also agree to a *get*. Thus, the wife can refuse as well, however problems arise because the implications when the husband refuses are worse due to religious law restrictions).

⁹³ *Id.* See generally, D. SHARFMAN, *LIVING WITHOUT A CONSTITUTION* 79 (1993).

⁹⁴ SHARFMAN, *supra* note 93, at 79.

⁹⁵ Galanter & Krishnan, *supra* note 45.

⁹⁶ SHARFMAN, *supra* note 93 at 79.

⁹⁷ EDELMAN, *supra* note 44 at 80-82.

⁹⁸ *Id.* at 82-84.

there is a social stigma many divorced Muslim women face within their communities which can be highly traumatic.⁹⁹

The above overview places into context how the women's movement in Israel has evolved over the years. This discussion has also focused on the main impediments that continue to contribute to the inequality women face. We next turn to examining the second set of our public interest groups, environmental organizations.

2. Environmental Groups

Whereas environmental groups in the United States prominently emerged in the late 1960's and throughout much of the 1970's, environmental activism really took shape in Israel during the 1980's.¹⁰⁰ Up until 1980, only four nationally active environmental organizations existed in Israel; all were government-funded and considered "partners" with the state.¹⁰¹ The oldest environmental group, the Society for the Protection of Nature in Israel, rarely (if ever) challenged state-authorities. Similarly, the country's most well-known anti-pollution organization, Malraz, was hardly belligerent in its tactics.¹⁰² Environmental groups before 1980 urged Israelis to love, nurture, and work with the state in preserving the beauty of the country's landscape.¹⁰³ As

⁹⁹ In Israel women of other religious minority communities, such as those who follow the Druze religion, also face gender discrimination in divorce proceedings. For a further discussion see *id.* at 89-99.

¹⁰⁰ Noga Morag-Levine, *Insiders, Outsiders, and Legal Convergence: Consensus and Disputes in Israeli Environmentalism*, 8 (1998) (unpublished paper presented at the American Political Science Association Conference) (on file with author) [hereinafter Morag-Levine, *Insiders, Outsiders*]. For a comparative study on the range of environmental enforcement mechanisms, see generally, Marcia Gelpi, *The Goals of Environmental Enforcement and the Range of Enforcement Methods in the United States and Israel*, 14 TEL AVIV STUD. IN LAW 135 (1998).

¹⁰¹ Yishai, *supra* note 26 at 150.

¹⁰² Malraz no longer exists today. It disbanded a few years back and many of its members joined other environmental groups.

¹⁰³ Yishai, *supra* note 26 at 150.

Noga Morag-Levine notes, with such a non-political aura pervading Israeli society, it is not surprising that hardly any environmental litigation was present at this time.¹⁰⁴

There are several reasons why Israel experienced such little environmental activism between 1950 and 1980. First, government policies during this time were focused on industrializing the Israeli economy. The various governments in power believed that the Israeli state needed to modernize quickly and stay technologically ahead of its neighbors in order to survive.¹⁰⁵ Prioritizing industrialization, however, came at the expense of the environment. Several environmental activists argue that this high-paced development of the country's infrastructure contributed to massive soil erosion and air and water pollution. Government officials though believed that such environmental concerns were secondary; once the Israeli state achieved industrialized status it then could turn its attention to other issues.¹⁰⁶

Second, prior to the 1980's funding for environmental causes, from both the government and outside sources, was minimal. Only after 1980 did the *New Israel Fund* (NIF), one of the country's most prominent funding agencies, begin to direct money specifically towards the environmental movement.¹⁰⁷ Indeed, the environmental sector by the 1990's saw an important increase in the number of environmental organizations. By 1996, there were twenty-one nationally based environmental groups and twenty-three locally based environmental groups.¹⁰⁸

Third, beginning in the 1980's the environmental movement received a surge of support from westerners migrating to Israel. These American and European environmental émigrés

¹⁰⁴ Morag-Levine, *Insiders, Outsiders*, *supra* note 100 at 8.

¹⁰⁵ See generally Yishai, *supra* note 26; also, see generally, David Vogel, *Israeli Environmental Policy in Comparative Perspective*, 5 ISRAEL AFF. (1999).

¹⁰⁶ *Id.*

¹⁰⁷ See, *supra* note 16.

¹⁰⁸ SHIRLI BAR DAVID & ALON TAL, *HARNESSING ACTIVISM TO PROTECT ISRAEL'S ENVIRONMENT: A SURVEY OF INTEREST ACTIVITY AND POTENTIAL* 31 (1996).

brought with them ideas, initiatives, and proposals to improve the Israeli ecosystem. In addition, Israelis interested in environmental issues began traveling back and forth between Israel and the West. This free flowing exchange of ideas and information eventually helped strengthen Israeli environmentalism.¹⁰⁹

Scholars who study Israeli environmental groups contend that in recent years environmental legal and administrative action is on the rise.¹¹⁰ In a survey of national and local environmental groups, Shirli Bar-David and Alon Tal report that “[f]ormal appeals to administrative or legal forums have at some point been attempted by 60% of the organizations.”¹¹¹ In the part III of this article, I examine the tactics of environmental groups and then delve into their specific use of litigation. As I shall show, my data is more conservative in estimating how many environmental groups engage in the legal process. However, before I address this topic, I offer a brief historical background of the civil liberties and civil rights movement in Israel.

3. Civil Liberties and Civil Rights Groups

Recall that the research design for this study includes those civil liberties and civil rights groups that espouse the separation between religion and state. Indeed while the question over what role religion should play in politics currently is extremely intense, this debate dates back to the founding of the modern Israeli state. When Israel achieved its independence in 1948 a deal, referred to as the “status quo” agreement, was struck between the secular, Zionist government of David Ben Gurion and the Orthodox religious parties of the time.¹¹² This agreement provided that the state would recognize: the Sabbath as the official holiday for the state; *kashrut* (kosher food) as the only meals permitted to be

¹⁰⁹ Morag-Levine, *Insiders, Outsiders*, *supra* note 100 at 11.

¹¹⁰ BAR-DAVID & TAL, *supra* note 108 at 16.

¹¹¹ *Id.*

¹¹² See EDELMAN, *supra* note 44 at 51; *see also*, Galanter & Krishnan, *supra* note 45.

served in state institutions; rabbinical control over family law; and a two-track educational system where Jews could send their children either to secular state schools or to state-funded Orthodox religious schools.¹¹³ In return, the religious parties were to pledge that they would not impede the development of the Israeli state.¹¹⁴

Since 1948, there has been an on-going struggle over the status quo agreement. On the one hand, there are those who contend that the state's above-mentioned concessions have undermined Israel's democracy. The argument is that the Orthodox wields a disproportionate amount of influence over important issues that include: "who is a Jew" for purposes of marriage and divorce; the allocation of government funding; and Arab-Israeli security negotiations.¹¹⁵

On the other hand, there are those within the various Orthodox religious communities that believe the state has reneged on many of the provisions of the status quo agreement. These religious advocates argue that the state, particularly the courts, have repeatedly moved the country in a pointedly secular direction. Since as early as 1962, when the Israeli Supreme Court decided in

¹¹³ *Id.*; see generally, MARTIN GILBERT, ISRAEL (1998).

¹¹⁴ EDELMAN, *supra* note 44 at 51-52. It is important to keep in mind that the term "Orthodox" in Israel really does not include members of the Conservative or Reform Movements, both of which are a very small minority in Israel. In fact, rather than using the term "Orthodox", Israelis frequently use the term "religious" in describing this community. While the divisions among Jews are quite subtle and complex, there is a noteworthy, recognized, two-fold divide within the Israeli Jewish community. First, there is a chasm between those who consider themselves secular and those who see themselves as religious. Second, there is a division within the religious Jewish community—between the Orthodox/religious and the "Ultra-Orthodox"/ultra-religious. For a detailed discussion of the nuances within the Israeli Jewish community, see generally, IAN S. LUSTICK, FOR THE LAND AND THE LORD: JEWISH FUNDAMENTALISM IN ISRAEL (1988); Menachem Friedman, *Jewish Zealots: Conservative versus Innovative*, in JEWISH FUNDAMENTALISM IN COMPARATIVE PERSPECTIVE: RELIGION, IDEOLOGY, AND THE CRISES OF MODERNITY 159-75 (Laurence J. Silberstein ed., 1993).

¹¹⁵ Galanter & Krishnan, *supra* note 45.

the famous *Brother Daniel* case¹¹⁶ that it, not the Orthodoxy, would determine who could qualify as a Jew for purposes of applying for citizenship, many in the religious community have charged that the Jewish identity of the state is being slowly secularized.¹¹⁷ In fact, just as recently as 1999, the Supreme Court came under attack by ultra-Orthodox Jews who held demonstrations protesting a wave of decisions, that in their view, undermined Judaism.¹¹⁸

It is true that the debate over religion is as old as the state of Israel. But what is relatively new is that the forces currently advocating a secular state are of a different form than they were in the past. Today, we see in Israel better-organized groups within civil society calling for a reduction in the Orthodoxy's role in state politics. Secular-based groups, human rights groups, and even

¹¹⁶ *Rufeisen v. Minister of the Interior (Brother Daniel Case)* (1962)16 P.D. 2428.

¹¹⁷ See Galanter & Krishnan, *supra* note 45.

¹¹⁸ These cases have not yet been translated into English. See, Haim Shapiro, *A List of Haredi Grievances*, JERUSALEM POST, Feb. 12, 1999, at www.jpost.com. This article summarizes the Court decisions that the Haredi are against. The decisions include: Two Court rulings that disallowed the withdrawal of a kashrut certificate in a public hall that displayed a Christmas tree as well as in another facility that held a New Year's Eve party; a Court ruling that prohibited military deferrals or exemptions for yeshiva students; a Court ruling that prohibited the Jerusalem Religious Council from setting the budget of a political party; a Court ruling that allowed for secular burial; a Court ruling that mandated that women be accepted in a course run by the Employment Service Board; two Court rulings stating that Reform and Conservative members be allowed to sit on religious councils; a Court ruling that allowed a girl to return to a secular school after her father withdrew her; a Court ruling that prohibited moshav rabbis from engaging in certain political tactics; a Court ruling refusing to enforce the wearing of a kippa in a rabbinical court; a Court ruling allowing the registration of Reform conversions; a Court ruling prohibiting rabbis of one sect to distribute holy oil to voters; a Court ruling in favor of holding exams for women pleaders in rabbinical courts; and a Court ruling against giving double subsidies to Bnei Akiva, a religious youth movement. See also, Haim Shapiro, *Women of the Wall Win High Court Hearing*, JERUSALEM POST, Feb. 18, 1999, at www.jpost.com (Court allowing women to hold the Torah and wear shawls as they pray at the Western Wall).

some religious groups are strongly unified in their demand that the state be free from the influence of the Orthodox Jewish community. For these reasons, civil liberties and civil rights organizations are important members within the public interest population in Israel.

III. SURVEYING THE TACTICS OF ISRAELI PUBLIC INTEREST GROUPS

Observers in the United States frequently mention that the tactics of interest groups are many and diverse.¹¹⁹ Is the same true for Israeli organizations? Leaders from thirty-nine groups described to me the types of tactics they employ. Table 1 displays the results.

Table 1. Reported Tactical Use by Public Interest Groups

Public awareness activities, including publishing materials and/or holding educational seminars	100%
Use of the media	67%
Participate in demonstrations or protests	62%
Informal contacts with legislators or bureaucrats	54%
Monitoring of government activity	51%
Involved in policy formation; served as members of government committee	46%
Formal Contact with bureaucrats or legislators (includes direct lobbying)	46%
Litigation	33%
Work in conjunction with parties	26%
N	39

¹¹⁹ See, e.g., SCHLOZMAN & TIERNEY, *supra* note 9 at 150; JEFFERY M. BERRY, LOBBYING FOR THE PEOPLE 212-252 (1977). For other studies on this subject, see JOHN HEINZ ET AL., THE HOLLOW CORE: PRIVATE INTERESTS IN NATIONAL POLICYMAKING 63-69 (1993); Anthony Nownes & Patricia Freeman, *Interest Group Activity in the States*, 60 JOURNAL OF POLITICS 88, 92 (1998); Thomas L. Gais & Jack L. Walker Jr., *Pathways to Influence in American Politics*, in MOBILIZING INTEREST GROUPS IN AMERICA 104-11 (Jack L. Walker Jr. ed., 1991).

The table highlights a number of different points. First, every group publishes materials and/or holds seminars for the purposes of making the public aware of the organization's activities. About two-thirds of the groups use the media as a technique, and sixty-two percent participate in demonstrations or protests. The data from my research indicate that there are two types of activities that involve slightly over half the groups. Fifty-four percent of the groups have informal contacts with legislators and bureaucrats, and fifty-one percent regularly monitors government proceedings. In addition, forty-six percent of groups are involved in policy formation, and this same percentage is engaged in formal contacts with policy-makers. Twenty six percent interact with political parties, and finally, with respect to litigation, a third of all groups use this strategy.¹²⁰

Tables 1 only displays the aggregate figures of interest group tactics. Table 2, however, provides disaggregated data for my findings.

¹²⁰ Yael Yishai in 1989-1990 conducted the first large scale survey of Israeli interest group tactics. In this study Yishai examined a variety of groups, including business groups, labor unions, agricultural groups, and public interest organizations. I do not compare her data on public interest groups with mine because in her study she places public interest groups under the category of "promotional organizations." Not only are women's groups, environmental groups, and civil liberties groups included in this category but so too are sports and leisure groups, foreign policy groups, cultural groups, and charity groups. When reporting her data on the tactics of these promotional organizations, Yishai does not disaggregate the results by group type. The data for this table has been updated and recomputed from Jayanth K. Krishnan, *New Politics, Public Interest Groups, and Legal Strategies in the United States and Beyond* (2001) (unpublished Ph.D. dissertation, University of Wisconsin-Madison). See YISHAI, *supra* note 20 at 248-75.

Table 2. Reported Tactical Use by Individual Sets of Groups¹²¹

	Women	Envir.	Civ.Lib/Rts	Chi Square
Public awareness activities, including publishing materials and/or holding educational seminars	100%	100%	100%	-----
Use of the media	63%	53%	100%	6.29**
Participate in demonstrations or protests	56%	47%	100%	6.18**
Informal contacts with legislators or bureaucrats	50%	40%	88%	5.92*
Monitoring of government activity	31%	53%	88%	6.8**
Involved in policy formation; served as members of government committee	50%	33%	63%	1.82
Formal contacts with legislators or bureaucrats (includes lobbying)	38%	40%	75%	2.52
Litigation	44%	13%	50%	4.39
Work in conjunction with parties	31%	13%	38%	2.36
N	16	15	8	39

* $p < .10$ ** $p < .05$

¹²¹ The data for this table represent the tactics the groups used at the time the interviews were conducted (1998-2000). For a review of how the groups were selected, see earlier discussion under part II. Also, in this discussion, I refer to civil liberties/civil rights groups simply as civil liberties groups.

Notwithstanding public awareness activities, in each row we see numeric variation for the different sets of groups, but do these variations reflect statistically significant differences? I answered the question of statistical significance as a two step process. First, I computed a chi square test for statistical significance across the three groups. The chi-square is shown in the last column of table 2. If the test did not indicate significance at least at the .10 level, I concluded that there were no statistical differences among the three groups in their use of the particular tactic. If the initial test did indicate statistically significant differences among the groups, I proceeded to conduct a series of difference of proportions tests to determine what differences were statistically significant.¹²² (For the difference of proportions tests, I use $p < .05$). We see from the last column in table 2 that the chi-squares for four of the tactics are statistically significant at a .05 level. These tactics include media-usage, demonstrations and protests, informal contacts with policy-makers, and monitoring government officials' activities. First, in terms of media use, we see that sixty-three percent of women's groups, fifty-three percent of environmental groups, and every civil liberties group participates in this tactic. Among the paired comparisons for this tactic, only the variation between women's groups and environmental groups is not statistically significant.¹²³ In terms of the difference between women's groups and civil liberties groups and between environmental groups and civil liberties groups the differences are statistically significant.¹²⁴

¹²² The difference of proportion tests constitutes a set of post hoc comparisons. Ideally, one would perform these comparisons using a statistical procedure intended for such a comparison (e.g. Scheffee' or Bonferonni procedures used in analysis of variance). Unfortunately, there is no such procedure, but this small number of comparisons is such that the dangers of paired comparisons are minor. See DAVID S. MOORE & GEORGE P. MCCABE, INTRODUCTION TO THE PRACTICE OF STATISTICS 604-06, 770 (1999).

¹²³ $Z = .57$; $P = .569$.

¹²⁴ For the former, the Z score is 3.06 and the P value is .002. For the latter the Z score is 3.6 and the $P < .001$.

For the next tactic, demonstrations and protests, 57% of women's groups, 47% of environmental groups, and every civil liberties group engage in this tactic. The results from the difference of proportions tests show that there are no statistically significant differences between women's groups and environmental groups in the use of this strategy.¹²⁵ But the difference between women's groups and civil liberties groups is statistically significant, as is the difference between environmental groups and civil liberties groups.¹²⁶ For the tactic that involves informal contacts with policy-makers, once again, the difference of proportions results indicate that there is no statistically significant difference between women's groups and environmental groups in the use of this tactic.¹²⁷ However, statistically significant differences do exist between women's groups and civil liberties groups and between environmental groups and civil liberties groups.¹²⁸ Finally, with respect to monitoring the activities of government officials, the difference in the use of this strategy is not statistically significant between women's groups and environmental groups. But there is statistical significance in the difference of usage between women's groups and civil liberties groups and between environmental groups and civil liberties groups.¹²⁹ As for litigation, this tactic is used by forty-four percent of women's groups, thirteen percent of environmental groups, and fifty percent of civil liberties groups. For litigation the chi-square is below the critical values; this

¹²⁵ $Z = .56$; $P = .575$.

¹²⁶ In the comparison between women's groups and civil liberties groups the Z score is 3.5 and the P value $< .001$. In the comparison between environmental groups and civil liberties groups the Z score is 4.1 and the P value $< .001$.

¹²⁷ $Z = .50$; $P = .617$.

¹²⁸ In the comparison between women's groups and civil liberties groups the Z score is 2.24 and the P value is .025. In the comparison between environmental groups and civil liberties groups the Z score is 2.81 and the P value .005.

¹²⁹ In the comparison between women's groups and civil liberties groups the Z score is 3.5 and the P value is .001. In the comparison between environmental groups and civil liberties groups the Z score is 2.03 and the P value is .042.

suggests that there are no statistical differences among the three sets of groups in the use of this policy technique.

The above discussion provides a detailed examination of the tactics used by public interest groups in Israel. In the next section, I focus specifically on the last strategy discussed, that of litigation. I first examine whether or not the standard explanations fully answer the question of when groups will and will not select litigation as a policy tactic. I show how in fact neither theory applies fully to the case of Israel. Following this discussion, I offer a set of hypotheses which argue that the ideas, ambitions, and goals of organizational leaders also must be considered when seeking to understand the litigation decisions of public interest groups. I then provide in-depth qualitative and quantitative evidence that supports several of these hypotheses. The data are important and particularly relevant to observers of American interest group litigation. The findings suggest that the traditional theories on why groups use courts in the United States need reconsideration. Let us begin by turning to the first of our standard theories, the institutional accessibility perspective.

IV. THEORIES OF LEGAL MOBILIZATION

A. *Institutional Accessibility Theory*

One explanation that is thought to affect when groups will and will not employ litigation is what we might call the *institutional accessibility* theory. This particular argument states that the degree of institutional accessibility to courts is directly related to how frequently groups participate in lawsuits.¹³⁰ So, for example, given a system where the courts are legitimately viewed, respected institutions, where the threshold for engaging in litigation is low, we might expect interest groups regularly to participate in lawsuits as a means to satisfy their policy objectives. Conversely, where the

¹³⁰ See Scheppele & Walker, *supra* note 3 at 165; DONALD L. HOROWITZ, THE COURTS AND SOCIAL POLICY 9-12 (1977); POSNER, *supra* note 9 at 64; SCHLOZMAN & TIERNEY, *supra* note 9 at 373-76.

threshold for participating in lawsuits is high, interest groups are thought not to employ this tactic on a regular basis. One common indicator of whether or not courts are accessible involves examining what the existing rules of *standing* are.¹³¹ In comparison to systems where there are few standing requirements, the expectation is that interest group litigation rates will be low in systems where several standing requirements must be met before a group is allowed to participate in the legal process.¹³²

B. *Resource-Based Theory*

Another common explanation that is often cited for whether or not interest groups use litigation is the *resource-based* theory. The standard resource-based argument states that groups with more resources will be more likely to use litigation than groups with fewer resources. A corollary to the resource-based argument is that groups that have resources but are unsuccessful in affecting policies at the legislative and/or the executive levels of government, will be more likely to turn to the courts as a means to further their policy objectives.¹³³

Resources have many different dimensions. Money is a one type of resource, but so too is legal expertise. Michael McCann notes that legal expertise can be extensively developed over years

¹³¹ See LAWRENCE BAUM, AMERICAN COURTS 102-03 (1992).

¹³² See LOWI & GINSBERG, *supra* note 65 at 343 (for a basic, although informational discussion of this point).

¹³³ Some have referred to this idea also as the political disadvantage thesis. For a series of works that have discussed the importance of resources, see Scheppele & Walker, *supra* note 3 at 181; KAREN O'CONNOR, WOMEN'S ORGANIZATIONS' USE OF COURTS 23 (1980); BAUMGARTNER & LEECH, *supra* note 12 at 143; JOEL F. HANDLER, SOCIAL MOVEMENTS AND THE LEGAL SYSTEM 25-35 (1978); FRANK J. SORAUF, THE WALL OF SEPARATION: THE CONSTITUTIONAL POLITICS OF CHURCH AND STATE 42 (1976). For the classic work on the importance of resources, see generally, Marc Galanter, *Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L. & SOC'Y REV. 96 (1974).

of group involvement in litigation.¹³⁴ Resources also can take on different forms including assistance from like-minded groups and/or aid or counsel from government agencies or legal staff.¹³⁵ Groups possessing these types of resources then might be expected to opt for litigation as a strategy to satisfy policy objectives.

C. *The Puzzle*

1. Testing Applicability of Standard Theories

In the United States these two standard explanations appear to account for whether or not groups use litigation as a public policy tactic. Although American courts today have the potential for being strong policy-making institutions, some studies suggest that "litigation is a relatively uncommon technique when compared to other group activities."¹³⁶ Why? For one thing, there are a number of institutional hurdles to gaining standing in the United States. In general prima facie proof is required that a defendant actually injured the plaintiff. A plaintiff needs to demonstrate that the injury suffered is traceable to the defendant. The plaintiff must also show that the courtroom is the proper arena to redress this grievance.¹³⁷ Furthermore, since the Supreme Court's decision in *Hunt v. Washington Apple Advertising Commission*,¹³⁸ a group may acquire standing in a lawsuit only after showing that each of its members, individually, suffered an injury. The Court also stated that an organization gains standing only if the lawsuit is related to

¹³⁴ MICHAEL MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION 108-11 (1994).

¹³⁵ See Jayanth K. Krishnan & Kevin den Dulk, *So Help Me God*, 30 GA. J. INT'L & COMP. LAW 233 (2002).

¹³⁶ BAUMGARTNER & LEECH, *supra* note 12 at 143; see also, DAVID KNOKE, ORGANIZING FOR COLLECTIVE ACTION 207-08 (1990); Nownes & Freeman, *supra* note 119 at 92.

¹³⁷ For a work that discusses these points, see SCHLOZMAN & TIERNEY, *supra* note 9 at 373; BAUM, *supra* note 131 at 102-03.

¹³⁸ James B. Hunt, Jr., Governor of the State of North Carolina, et al., v. Washington State Apple Advertising Commission, 432 U.S. 333 (1977).

the organization's purpose of existence.¹³⁹ Therefore, the bar is quite high for American public interest groups that wish to bring lawsuits to achieve certain policy outcomes.¹⁴⁰

Limited resources also appear to account for why lawsuit participation by American public interest groups is not a commonly used tactic. Studies note that participating in lawsuits on a regular basis is an expensive endeavor for these organizations.¹⁴¹ Whether it is due to a lack of money, too few attorneys on staff, or insufficient legal assistance few public interest groups in the United States are capable of frequently participating in the prolonged tactic of litigation. The availability of resources, then, is seen as a main factor in determining whether or not these types of American groups use litigation as a public policy tactic.

But in other countries, are the institutional and resource theories necessary and sufficient for understanding when groups will and will not turn to the courts? Consider the case of Israel. Israel serves as an optimal country to test the alternative explanations. The conditions in Israel appear ripe for many groups to use litigation as a policy tactic. Yoav Dotan notes that the costs for participating in litigation in Israel are low. Particularly when the Supreme Court sits as the High Court of Justice (HCJ):

¹³⁹ *Id.* at 343. Note, a group serving as legal counsel to a client is not required to meet the *Hunt* criteria.

¹⁴⁰ Rules of standing are not the only hurdles that plaintiffs must cross in order to participate in lawsuits in the United States. Article II of the Constitution limits the exercise of judicial power to cases and controversies. *See*, U.S. CONST. art. III, §2, cl.1. This phrase has been interpreted to mean that an interest group's lawsuit will not be sustained unless there is an actual, defined conflict between adversarial parties. A group that brings a lawsuit also must show that the issue it wishes to litigate is not *moot*. The group must demonstrate that its claim is timely, factually still relevant, and has not been resolved by some means. *See* ROBERT A. CARP AND RONALD STIDHAM, JUDICIAL PROCESS IN AMERICA 133-34 (2nd ed., 1993).

¹⁴¹ *See, e.g.*, EPP, RIGHTS REVOLUTION, *supra* note 4 at 58-61, 69-70; SCHLOZMAN & TIERNEY, *supra* note 9 at 376-78; Scheppele & Walker, *supra* note 3 at 181-83.

[A]ccess to the Court is assured by minimal court fees and by the lack of cumbersome formal requirements. A petition to the HCJ can be written by a layman, and at no stage of the proceedings is representation by a lawyer required.¹⁴²

Furthermore, beginning in the 1980's the country's Supreme Court broadened the legal definition of standing.¹⁴³ In the most significant of these cases, *Ressler v. Minister of Defense*,¹⁴⁴ the Court decided that so long as an individual or group has a claim relating to government misconduct, that person or organization could file a constitutional claim directly in the Supreme Court.¹⁴⁵ Yet despite such favorable institutional conditions, if we refer back to table 1, we see that based on my interview and survey data litigation is one of the least used tactics by Israeli public interest groups. As table 1 notes, only a third of Israeli groups I examined pursue their policy objectives through the legal process.

In addition to lenient institutional requirements for entering into court, several Israeli interest groups also have seen a growth in

¹⁴² Dotan, *supra* note 7 at 323. The Supreme Court of Israel has multiple functions. It serves as the court of last resort (having discretionary jurisdiction) in everyday civil and/or criminal cases. It serves as a court of appeals for serious cases involving civil or criminal offenses. And it serves as a court of first and last resort when it sits as the High Court of Justice (HCJ). The HCJ hears cases that directly challenge the legality of a public body. Public bodies may include public agencies, local authorities, public companies in some cases, private bodies acting in a public capacity, the legislature, and the President. (It is uncertain if the HCJ will hear a case directly against the Prime Minister). *See id.* at 322-24; *see also*, Marcia Gelpe, *Constraints on Supreme Court Authority in Israel and the United States: Phenomenal Cosmic Power; Itty Bitty Living Space* 13 EMORY INT'L L. REV. 493 (1999).

¹⁴³ *See*, H.C. 217/80, Segal v. Minister of Interior, 34 (4) P.D. 441; H.C. 1/81 Shiran v. Israeli Broadcasting Authority, , 35 (3) P.D. 365.

¹⁴⁴ H.C. 910/86, 42 (2) P.D. 441.

¹⁴⁵ *See, supra* note 142. It is important to note that Israel has no formal constitution but instead has a series of Basic Laws that serve as the foundation for Israeli constitutional jurisprudence. *See Gelpe, supra* note 142.

resources during the past two decades. Below table 3 provides information on whether or not Israeli groups with more resources are more likely to use litigation than groups with fewer resources.

Table 3. Ranking Israeli Interest Groups on Basis of Resource-Possession

	High (Top ¼)	Medium (Second ¼)	Low (Third ¼)	Bottom (Last ¼)
% using litigation	50%	40%	30%	11%
% not using litigation	50%	60%	70%	89%
N	10	10	10	9

Chi Square = 4.37, df = 3, p = .193

As we have stated, resources of course have a variety of definitions. This table provides a blunt measure of group-resources by focusing on the financial budget of interest organizations. Resources appear important for whether or not Israeli groups participate in lawsuits. The table shows that of the groups that are in the top quartile (with respect to resources) 50% engage in litigation; of those in the bottom quartile, only 11% litigate. But of the groups that fall into the “medium resource” category forty percent litigate, and of the groups that fall in the “low resource” category nearly a third litigate. The fact that there is a relatively even distribution among the top three categories intimates that other factors must also affect the decision-calculus of organizational policy makers.¹⁴⁶

¹⁴⁶ Data on financial resources were provided during the interviews. In some cases, groups even allowed me to review annual financial reports (anonymity requested).

D. *Importance of Interest Group Leadership Goals*

Aside from institutional and resource factors, I argue that a set or *taxonomy of interest leadership goals* also affects whether or not public interest organizations opt for litigation as a policy tactic. The literature is replete with both classic and more recent studies that suggest goals can and do affect behavior. Many years back Abraham Maslow postulated his famous humanistic theory of motivation that said the study of goals and motivations is key to fully understanding why people act the way they do.¹⁴⁷

Maslow suggested that individuals have a hierarchy of goals, needs, and motivations that drive human behavior. Others, such as J. Stacy Adams, have observed that people's everyday behavior is often driven by the goal of erasing the financial, social, and political inequities they encounter on a regular basis.¹⁴⁸ Richard Nisbett and Lee Ross have elaborated on this idea by proposing that goals are important in affecting the decision-making calculations of individuals.¹⁴⁹ David McClelland has argued that a person's goals can shape expectations, thoughts, and even achievement levels.¹⁵⁰ More recently, Edward Deci and Richard Flaste have suggested that an individual's specific set of goals affects the strength in which that person works towards a particular objective.¹⁵¹ In addition, for years interest group scholars who focus on *organizational maintenance* have noted that the priorities and agendas of leaders, in particular, determine the tactics undertaken by groups.¹⁵²

¹⁴⁷ See generally, ABRAHAM MASLOW, *MOTIVATION AND PERSONALITY* (published by Harper & Row)(1954).

¹⁴⁸ See generally, J. STACY ADAMS, *EQUITY THEORY: TOWARDS A GENERAL THEORY OF SOCIAL INTERACTION* (1976).

¹⁴⁹ See generally, RICHARD NISBETT AND LEE ROSS, *HUMAN INFERENCE: STRATEGIES AND SHORTCOMINGS OF SOCIAL JUDGMENT* (1980).

¹⁵⁰ See generally, DAVID MCCLELLAND, *HUMAN MOTIVATION* (1985).

¹⁵¹ See generally, EDWARD L. DECI AND RICHARD FLASTE, *WHY WE DO WHAT WE DO* (1995).

¹⁵² See e.g., Jack L. Walker, *The Origins and Maintenance of Interest Groups*, 77 AM. POL. SCI. REV. 390 (1983); Lawrence Rothenberg, *Organizational Maintenance and the Retention Decision in Groups*, 82 AM. POL. SCI. REV.

Drawing on this rich literature, I hypothesize that the goals of interest group leaders affect not only if, but how frequently, organizations litigate. On the basis of how many lawsuits they participated in per year, groups were ranked and then placed into one of four categories: "regular," "moderate," "infrequent," or "non-users" of litigation. (Note I place groups into these categories on the basis of natural breaks in the statistical distribution).¹⁵³

I specifically identify and examine five goals:

1. A Utilitarian Goal
2. A Reputation Goal
3. A Role Fulfillment Goal
4. A Donor-Satisfaction Goal
5. A Publicity Goal

Below I present a set of hypotheses regarding these goals. First, I make hypotheses on the nature of the relationship that I expect to exist between each goal and how frequently a group uses litigation. Second, I hypothesize about what goal will be most important for regular users, moderate users, and infrequent users in their decision on whether or not to litigate.

The first goal in my taxonomy is the *utilitarian goal*. This goal relates to the amount of desire group leaders have towards winning at litigation. The expectation is that the more a group desires to achieve policy objectives through litigation, the more frequently that group will litigate. Conversely the less a group

1129 (1988); Robert H. Salisbury, *An Exchange Theory of Interest Groups*, 13 MIDWEST J OF POL. SCI. 1 (1969); see generally TERRY M. MOE, THE ORGANIZATION OF INTERESTS: INCENTIVES AND THE INTEGRAL DYNAMICS OF POLITICAL INTEREST GROUPS (1980); MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION (1965).

¹⁵³ In addition, each group interviewed was asked to self-describe themselves as a "regular," "moderate," "infrequent," or "non-user" of litigation. Only in a handful of instances did the self-description provided by the group not match up with my primary method. (In these cases I labeled the group on the basis of the actual number of cases in which they participated, rather than relying on their self-description).

seeks to achieve policy objectives through litigation, the less frequently that group will litigate. The hypothesis then is that a positive relationship exists between the utilitarian goal and the frequency of litigation. I further hypothesize that this desire to achieve policy results through litigation is the *most important* goal for why regular users employ this tactic. To some these hypotheses perhaps seem obvious. But the tactical decision-making process is complex. Group leaders may choose to litigate for several reasons, including satisfying internal membership demands or highlighting an issue in a legitimate public forum.¹⁵⁴ For this reason it is important to test these particular hypotheses.¹⁵⁵

Second, there is a *reputation goal*. The more that leaders of a group seek to maintain, preserve, or establish a reputation for being a litigating organization, the more frequently that group will litigate.¹⁵⁶ Conversely, a group whose goal it is to avoid being labeled as a "litigator" is expected to use litigation only on rare occasions or not at all. The hypothesis then is that there is a positive relationship between the reputation goal and the frequency of litigation.

Third, there is a *role fulfillment goal*; how much pressure or obligation a group feels from partners within the same policy network to litigate will affect whether or not the group participates

¹⁵⁴ See e.g., MCCANN, *supra* note 134 at 61-64; Ronen Shamir, *Litigation as a Consummatory Action: The Instrumental Paradigm Reconsidered*, 11 STUD. IN LAW, POL., & SOC'Y 41 (1991); STUART A. SCHEINGOLD, *THE POLITICS OF RIGHTS* 139 (1974).

¹⁵⁵ It is important to note that the idea of winning at litigation can take many forms, from winning a judgment or verdict to gaining an injunction order to receiving a settlement. This desire to achieve policy results through litigation may be caused by several factors, including the fact that the group has previously won using this tactic or that a group is not successful using other tactics of influence. Regardless, the idea that group leaders are affected by the utilitarian goal certainly plays a role in whether or not this tactic is selected.

¹⁵⁶ For a related discussion on reputation, see, HERBERT M. KRITZER, *THE JUSTICE BROKER: LAWYERS AND ORDINARY LITIGATION* 165-76 (1991); Herbert M. Kritzer and Jayanth K. Krishnan, *Lawyers Seeking Clients: Clients Seeking Lawyers*, 21 LAW & POL'Y 347 (1999).

in the legal process. The hypothesis is that the more pressure a group feels to fulfill the role as a litigating organization, the more likely the group will litigate. (Group leaders may feel such obligation or pressure for several reasons, including the fact that their organization is specialized or possesses certain skills). In contrast the less pressure a group feels to fulfill the role as a litigating organization, the less likely a group will litigate. The hypothesis then is that a positive relationship exists between the role fulfillment goal and the frequency of litigation.

The fourth goal is the *donor-satisfaction goal*. The hypothesis is that a positive relationship exists between the importance that a group places on satisfying donor-demands and how frequently that group uses litigation. In other words groups that place *more importance* on currying favor with donors will use litigation **more frequently**. Groups placing *less importance* on satisfying the wishes of donors will use litigation **less frequently**. Based on empirical work performed on over 1,300 interest groups in the United States, Scheppele and Walker show that most financial patrons disdain and refrain from supporting the tactic of litigation because of the time involved in the judicial process, the uncertainty of results, and the high costs.¹⁵⁷ Organizations using litigation on a more frequent basis recognize that their supporters are atypical and uncommon in the world of interest group contributors. After all, these contributors know the downsides of litigation but are still willing to support groups that use the courts, perhaps because of a belief that the legal system is the best arena for achieving important policy objectives. With such contributors being few and far between, I argue that groups using litigation more frequently do so because they are quite beholden to their donors' wishes. Conversely, groups using litigation less frequently, or not at all, are less dependent upon the wishes of these types of donors. Because such groups can and do draw on a wider array of support they are not as tied to, influenced by, or concerned with the wishes' of individual patrons when devising strategy.

¹⁵⁷ Scheppele & Walker, *supra* note 3 at 162-64.

In addition, I hypothesize that “moderate users,” in particular, will view donor-satisfaction as the most important goal for whether or not they employ litigation. The donors for moderate users especially fall into the above-mentioned category of being atypical or uncommon. Patrons who specifically donate to moderate users like this idea that the groups they support are active in a variety of strategies, including litigation.¹⁵⁸ These donors appreciate contributing to “jacks of all trades” because of the belief that the more pathways that are pursued, the more likely it is for policy objectives to be achieved.¹⁵⁹ Because such types of donors are far from common, moderate users are highly sensitive to this donor preference. Group leaders know they must remain active in several types of tactics, including litigation, if they want to receive continued financial support.

Finally, there is a *publicity goal*. This goal of publicity is distinct from reputation in that it relates to how much a group seeks to highlight a cause—rather than its own name—to the public. I hypothesize that there is a negative relationship between the publicity goal and the frequency of litigation. Otherwise put, the *less importance* placed on publicity, the *more likely* a group will use litigation on a regular basis. Conversely, the *more importance* a group places on gaining publicity through the legal process, the *less likely* it will use litigation.

Litigation is a very public tactic; going to court draws the attention of many observers within society. As I shall show because regular users of litigation typically are more established and better-known, they do not view generating publicity for a cause as importantly as other goals when making tactical decisions. In contrast I suggest that groups using litigation less frequently believe that in most situations the best way to advocate a cause is by engaging in more non-confrontational, non-public types of strategies. Such users simply prefer other approaches to dealing

¹⁵⁸ For data showing that groups using litigation in moderate amounts use a variety of strategies, see, *supra* note 119.

¹⁵⁹ This idea of multiple pathways of influencing officials comes from, Gais & Walker, *supra* note 119.

with issues. However, there are those situations when these types of groups indeed opt for litigation, and I argue the reason they do so is mainly because of the intense desire to highlight the cause to an otherwise uninformed or politically unaware public. There is a real sense among these groups that going to court raises public awareness as well as publicly legitimizes an issue in a way that no other tactic can.¹⁶⁰ Perhaps not surprisingly, then, I also suggest that the publicity goal is the most important goal in whether or not “infrequent users” employ litigation.

This section thus makes a number of hypotheses regarding interest group leadership goals. To summarize, the utilitarian goal is hypothesized to be the most important goal affecting whether or not regular users litigate. The donor-satisfaction goal is hypothesized to be the most important goal affecting whether or not moderate users litigate. The publicity goal is believed to be the most important goal affecting whether or not infrequent users litigate. And, a positive relationship is hypothesized to exist between:

- the utilitarian goal and how frequently a group uses litigation;
- the reputation goal and how frequently a group uses litigation;
- the role fulfillment goal and how frequently a group uses litigation; and
- the donor satisfaction goal and how frequently a group uses litigation.

While a negative relationship is hypothesized to exist between:

- the publicity goal and how frequently a group uses litigation.

In the next section, I first test the accuracy of the most important goal hypotheses. I separately evaluate regular users, moderate users, and infrequent users of litigation. Following this discussion I then focus on the set of hypotheses involving whether the relationship between the goals and the frequency of litigation is positive or negative. I end the article with a detailed conclusion of how the findings from this study are important and applicable to

¹⁶⁰ For support of this hypothesis, see MCCANN, *supra* note 134 at 61-64; SCHEINGOLD, *supra* note 154 at 139; HANDLER, *supra* note 133 at 214-22.

furthering our understanding of group litigation not only in Israel but in the United States as well.

E. Applying Theory to Data—Assessing the Most Important Goal Hypotheses

1. Regular Users

For those groups I categorize as regular users approximately 40% are women's groups, 20% are environmental groups, and 40 % are civil liberties groups.¹⁶¹ Table 4 lists each of the groups.

Table 4. Regular Users of Litigation in Israel

<i>Group</i>	<i>Type</i>
New Family	Women's Group
Shedula *	Women's Group
Adam Teva V'Din	Environmental Group
Association for Civil Rights In Israel (ACRI)	Civil Liberties Group
Israel Religious Action Council (IRAC)	Civil Liberties Group

*The Shedula today is a much different organization than when I first collected this data in 1998-1999. However, the lessons learned from this group are valuable, and for this reason I include it in the study.

Is the utilitarian goal the most important factor affecting whether or not regular users employ litigation? To ascertain the answer I asked the leaders from each of the regular users to rank the goals in order of importance from one to five. (Five was labeled as most important while one was labeled least important). For example, below Israeli regular users "I" and "J" might have the respective rankings:

¹⁶¹ Recall that I place each group into the category of regular, moderate, or infrequent user of litigation on the basis of the number of lawsuits it participates in per year.

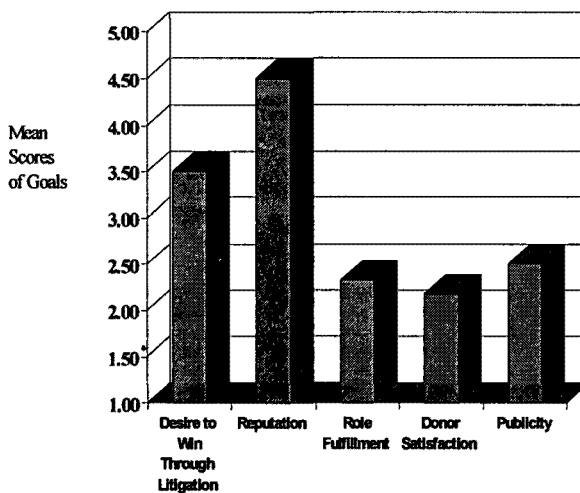
Goals Group "I" Group "J"

Utilitarian Goal	5	1
Reputation Goal	4	2
Role Fulfillment Goal	3	3
Donor Satisfaction Goal	2	4
Publicity Goal	1	5

After receiving every regular user's ranking, I added up the total score for each goal. (For instance, in the above hypothetical the total score for the utilitarian goal would be six). I then computed the mean score for each goal. Figure 1 provides a bar chart graphing the mean score of each goal for regular users. The figure unexpectedly shows that the desire to achieve policy results through litigation, or the utilitarian goal, is not the most important goal for regular users. Instead, the reputation goal has the highest mean score for Israeli regular users of litigation.

Figure 1

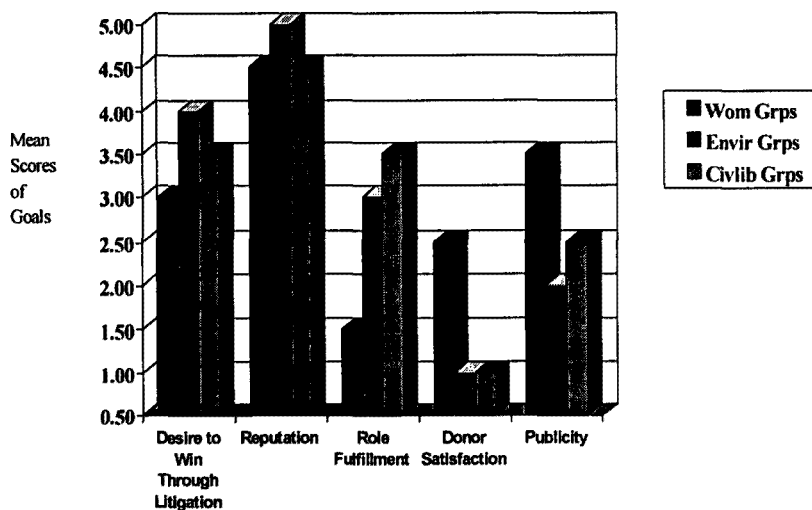
Goals That Affect Regular Users



Below figure 2 disaggregates the results by showing the mean scores for women's groups, environmental groups, and civil liberties groups.

Figure 2

Regular Users by Group Type



The second figure displays how there are differences among the groups in terms of four of the five goals. But again the key finding is that the reputation goal, rather than the utilitarian goal, is cited as the **most important factor** affecting whether or not Israeli regular users employ litigation as a policy tactic.¹⁶² A common theme

¹⁶² To show variation on the independent variable of reputation, I report that 3/5 regular users stated it was most important, while 2/5 stated it was second most important. No moderate user or no infrequent user stated that reputation was most important. I also report that for the environmental group in this part of the study, I received two sets of responses to the survey. One response came from an official affiliated and working with the group while I was conducting my research. The other response came from an official who had left the organization before I started doing my field-work. I rely on the former for this study.

found throughout the interviews was that maintaining a reputation for being a litigating organization was a crucial factor that drove regular users to use the legal process. Conversely, regular users repeatedly stated that if a case might hurt the group's overall reputation, then it would be less likely to litigate the case.

For example, Irit Rosenblum, a one-time lead attorney and a board member of Women's International Zionist Organization, and currently the head of the New Family Organization, noted the complexity involved in the decision-making process.¹⁶³ "It's not just about money," this official repeatedly commented. For one thing, the salience of the particular issue certainly matters. Rosenblum is likely to turn to the courts over an issue that is highly salient and impacts a large segment of society. But she considers a number of other factors as well. Of these Rosenblum noted that the most important is that she seeks to maintain a reputation for not being afraid to use litigation as a policy tactic. According to Rosenblum, many would-be or potential violators of women's rights refrain from behaving illegally because they are aware that they may incur a legal challenge from her organization. For the sake of women throughout Israel, then, it is key that she and the group retain the reputation for being a staunch defender of legal rights.

There are other secondary and tertiary considerations for Rosenblum as well. For example, she sees legal victories as an overall legitimization of the goals that she pursues. The strides women, such as she, have made within the legal arena are respected within the eyes of the general public and other state institutions. Furthermore, Rosenblum currently engages in litigation because most of the group's members support fighting for women's rights through the courts. Rosenblum takes her cues from supporters and thus does not shy away from using litigation as a common policy tactic. And Rosenblum noted that because there is so little cohesion between the various women's groups in the

¹⁶³ Interview with attorney Irit Rosenblum, Director of New Family Organization, Tel Aviv, Israel (Sept. 24, 1998); second interview, Oct. 7, 1998.

country, she feels a need to litigate on her own.¹⁶⁴ This statement supports other previous research that contends that although the differences that once existed among Israeli women's organization no longer are as deep-seated, "women's associations in Israel hardly ever act as 'sisters.'"¹⁶⁵

The factors that affect when elites like Rosenblum will and will not employ litigation support my broader contention that the ideas, interests, and goals of the group's leaders are extremely important. Clearly a combination of factors affect the decision-calculations on whether or not to litigate. But ultimately, as this official noted, reputation-concerns do remain the most important factor that affects if this particular tactic is selected.

The empirical data gathered on those other regular users of litigation yield similar results. For example, the environmental organization, Adam Teva V'Din, is another regular user of litigation. Adam Teva V'Din (literally translated as Man, Nature, and Law, but more commonly known as the Israel Union for Environmental Defense) was founded in 1991 by Dr. Alon Tal. Tal, an Israeli-born attorney and Harvard-educated environmental scientist, formed Adam Teva V'Din in the hopes of bringing environmental awareness to Israel.¹⁶⁶ Adam Teva V'Din today has close to 1,700 fee-paying members and receives its other funding through private foundations from within Israel as well as abroad.¹⁶⁷

In 1996 Tal stepped down as director of the organization, and Dan Fisch took over as the new leader. Fisch, an American-born Jew who practiced law in California and then made *aliyah* in the 1970's, also has a license to practice law in Israel. In his interview with me, Fisch provided a complete picture of what factors affect whether or not Adam Teva V'Din opts for litigation as a policy tactic. Resources, according to Fisch, are a definite consideration. An environmental "problem" will come to Adam

¹⁶⁴ *Id.* (Sept. 24, 1998).

¹⁶⁵ YISHAI, , *supra* note 41 at 81.

¹⁶⁶ Amber Landau, *The Greening of Israel*, JERUSALEM POST Sept. 12, 1997.

¹⁶⁷ *Id.* Interview with Fran Goldman, official working at Adam Teva V'Din, Tel Aviv, Israel (Sept. 28, 1998).

Teva V'Din, and it will be discussed by the different leaders of the organization in a conference meeting. The group will try to see if there are ways to resolve the problem without having to employ litigation. Alternative means to "fixing the problem are often cheaper than going to court."¹⁶⁸

However, being the only true public environmental litigation firm in Israel, Fisch indicated that Adam Teva V'Din considers other factors before deciding whether or not to employ litigation. Specifically, Fisch stated that Adam Teva V'Din has a reputation to maintain among the Israeli public. A case may enter the firm, and even though the matter may not be one that leads to a precedent-setting judgment, Fisch may nevertheless decide to litigate. Why? Fisch indicated that Adam Teva V'Din cannot solely be interested in "big-name" cases. Adam Teva V'Din is a public interest group that is known for serving the needs of the entire public, not just the wealthier, or better-known segments of it.¹⁶⁹

Furthermore, as a result of its reputation, other non-litigious environmental groups depend upon Adam Teva V'Din's legal expertise to handle the bulk of environmental legal matters. The organization has on staff a number of attorneys and scientists, as well as close to two dozen environmental analysts who are all specialists in environmental law. Even the country's oldest environmental group, the Society for the Protection of Nature in Israel (founded in 1953), has almost moved completely away from litigating environmental cases, because of Adam Teva V'Din's reputation for being the main litigating organization in Israel.¹⁷⁰ As Fisch remarked, "our name is who we are; people rely on us because of our reputation and we can't let them down."¹⁷¹

¹⁶⁸ Interview with Dan Fisch, Director of Adam Teva V'Din, Tel Aviv, Israel (Sept. 28, 1998). Note, at the time of the interview Fisch was the leader of the organization. Currently, the leader is Phil Warburg, an American from the Environmental Law Institute who also made *aliyah*.

¹⁶⁹ *Id.*

¹⁷⁰ Interview with a leader of Society for the Protection of Nature who asked to be referred to just as "Abe," Jerusalem, Israel (Oct. 13, 1998).

¹⁷¹ See, *supra* note 168.

Fisch discussed two cases in particular to highlight the importance of the reputation goal. In *Adam Teva V'Din v. The National Planning and Building Council*,¹⁷² Fisch's group sought to block the construction of a trans-national highway that it believed would cause irreparable environmental harm. The group made a procedural argument to the Supreme Court contending that because certain requirements listed in two Israeli statutes were not followed by those authorized to build the highway, the construction should not go forward. Adam Teva V'Din lost, but as Fisch indicated, the group litigated this case, not only just to win, but for other reasons as well. By bringing such a case to court, the group was able to draw the public's attention to an issue which, up to that point, had received little press coverage. More importantly though, had the group not litigated this case its reputation for being the country's environmental champion most certainly would have come into question.¹⁷³

The importance of the group's reputation came up in a second case that Fisch described to me. In this case, Adam Teva V'Din sued Haifa Chemicals Incorporated for their production of hazardous chemicals.¹⁷⁴ From the start Haifa Chemicals was very reluctant to go to court, especially knowing they would face the top environmental lawyers in the country. To avoid litigation, the company agreed to a landmark settlement with Adam Teva V'Din in 1996.¹⁷⁵ Fisch noted that because private industries know that he is willing to go to court opponents take his group's demands very

¹⁷² 95 (2) 147 (1995).

¹⁷³ See, Morag-Levine, *Insiders, Outsiders*, *supra* note 100, at 14. Note, Noga Morag-Levine argues that Adam Teva V'Din suffered its "most disappointing litigation venture," with the loss of this case. During my interview with Fisch, however, the director staunchly rejected Morag-Levine's interpretation, citing instead the benefits the group (and the environmental movement) received from the publicity and awareness this case generated.

¹⁷⁴ For a discussion of this case, see, ADAM TEVA V'DIN 5 (1995).

¹⁷⁵ See, Morag-Levine, *Insiders, Outsiders*, *supra* note 100, at 14-15. The settlement included Haifa Chemicals contributing a large amount of money to an environmental trust fund as well as attorneys' fees to Adam Teva V'Din.

seriously.¹⁷⁶ Clearly from this latter example, the reputation of Adam Teva V'Din helped the group "win" without even having to set foot in court.¹⁷⁷

Thus, the information gathered from the interview with Dan Fisch indicates that reputation is extremely important in whether or not this organization selects litigation as a policy option. The fact that reputation matters does not imply that neither resources nor institutional factors are irrelevant. As Fisch indicated, resources are an important consideration. He also stated that having the institutional flexibility ability to petition the Supreme Court directly on matters involving the state is quite beneficial for his group. But this interview reveals one very important fact: the decision-calculus of a group contemplating litigation is complex, subtle, and multi-dimensional.

One of the major and most senior "regular users" is the Association for Civil Rights in Israel (ACRI). Established in 1972, ACRI has served as the country's leading organization that promotes civil liberties and civil rights. As its charter states, "ACRI is a strictly nonpartisan, nonprofit organization that protects the rights of all individuals in Israel and in the occupied territories, regardless of religion, nationality or political beliefs."¹⁷⁸ As Benjamin Beit-Hallahmi, a former board member stated,

¹⁷⁶ See, *supra* note 168.

¹⁷⁷ Pressure from members and donors is also another important factor that affects the decision-calculus of leaders within Adam Teva V'Din. Along with the paid staff, there are hundreds of volunteers that work for the group. The expectation from the vast majority of these people, according to the head of the employees staff, Fran Goldman, is that Adam Teva V'Din will use the law to improve the pollution-problems that affect Israeli society. Furthermore, donors such as the Ford Foundation, the Nathan Cummings Institute, the Bronfman Organization, and the New Israel Fund, also contribute money to Adam Teva V'Din on the assumption that the group will employ litigation as a tactic to further the environmental movement within the country. (Budgetary reports provided to the author by the staff of Adam Teva V'Din).

¹⁷⁸ Association for Civil Rights in Israel mission statement and charter, available at <http://www.nif.org/acri/acintro.html>.

"ACRI just wants all people to have equal access to the government."¹⁷⁹

ACRI's charter lists a variety of activities in which it participates, including education, public outreach and awareness programs, informal and formal lobbying tactics, counseling, and legislative consultation.¹⁸⁰ Among the most used tactic by the group, however, is litigation. In my interview with an attorney from ACRI, I was told that the decision to use litigation is based on a number of important factors. But reputation concerns, in particular, play a pivotal role in whether or not ACRI takes a case.

For example, in a move that surprised many observers, ACRI a few years back initially did not petition the Supreme Court to strike down a law that prohibited motorized vehicles during the Sabbath from operating on a particular street inhabited by ultra-Orthodox Jews. According to the attorney I interviewed, ACRI studied this issue and decided that those who were interested in challenging this law were not truly in favor of fostering tolerance or religious pluralism within the Israel. Instead, many of the opponents to this law had ulterior motives that included seeing the Orthodoxy completely marginalized from politics. In the eyes of ACRI, ties to such uncompromising individuals risked placing ACRI's reputation as an inclusive, equal opportunity organization in serious jeopardy. Clearly the group believes that without a good name it is really not in a position to fulfill its mission which is to help the helpless and defend the defenseless.¹⁸¹

Preserving a strong reputation is also important for another reason. ACRI's high-powered name often "forces" the state to address certain concerns of the group. A not-so-infrequent occurrence is that ACRI will file suit against a state ministry that has initiated a policy that ACRI opposes. Before the case is heard in court, a government official will typically contact an ACRI

¹⁷⁹ Interview with Benjamin Beit-Hallahmi, former board member of ACRI, Haifa, Israel (Sept. 11, 1998).

¹⁸⁰ Association for Civil Rights in Israel, *supra* note 178.

¹⁸¹ Interview with attorney from ACRI who requested protection of identity, Jerusalem, Israel (Aug. 15, 1998).

attorney to discuss what changes might be made in the implementation of the policy. If no agreement can be reached, then ACRI proceeds with the suit. However, the next time the government considers policies relating to this type of issue, a member of ACRI usually will be consulted on how the regulation or law should be drafted. ACRI's reputation as a group that will not hesitate to litigate as well as its reputation for being an expert in various policy matters allows the group to be involved in the development of many important issues.¹⁸²

It is crucial to note that while the reputation goal is extremely valued by ACRI, other considerations enter into the decision-calculus as well. For example, favorable institutional factors (the ability to petition directly the Supreme Court) and sufficient resources enable the group to use litigation on a regular basis.¹⁸³ ACRI members and constituents are also very supportive of the group's litigation efforts. Furthermore, when it is likely that litigating a case may lead to landmark changes in the law, then this factor becomes another consideration ACRI takes into account. And, where ACRI believes there is a need to make the public aware of an important issue, then this too plays a role in the decision-making process.¹⁸⁴

The above evidence indicates that a variety of factors matter greatly for the regular users of this study. However, on average, reputation concerns were cited as indeed crucial. Statistically, then, is the score given for the reputation goal by these regular users significantly different from the rest of the goals cited? In order to determine whether or not the difference between the most important goal (reputation) and the rest of the goals cited was statistically significant, I conducted a series of what is known as paired samples tests. (These statistical tests are explained and illustrated in Appendix A). The results indicate that there is indeed statistical significance in the difference between the reputation goal and the rest of the goals cited. The fact that the reputation goal is

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

distinctively important demonstrates that not only resources and institutional accessibility determine whether or not Israeli regular users decide to litigate.

2. *Moderate Users*

Of the Israeli moderate users I examined, 25% are civil liberties groups and 75% are women's groups. No environmental group qualified as a moderate user. Table 5 lists the Israeli moderate users.

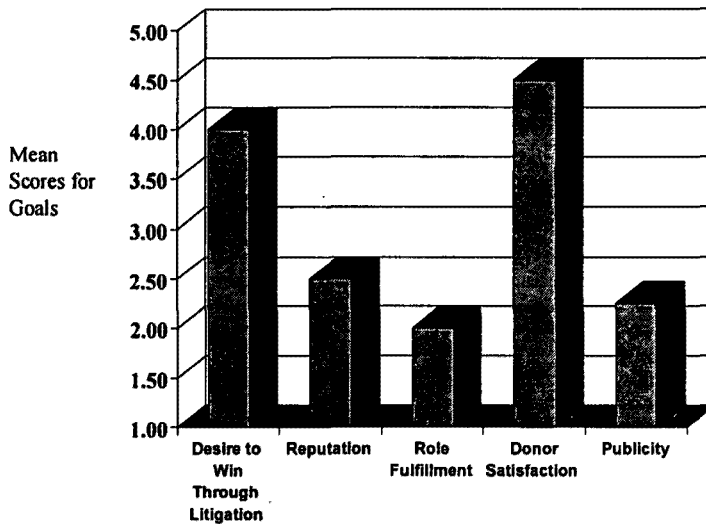
Table 5 . Moderate Users of Litigation in Israel

<i>Group</i>	<i>Type</i>
Emunah	Women's Group
Naamat	Women's Group
Women's International Zionist Organization (WIZO)	Women's Group
Masorti	Civil Liberties Group

For these groups, figure 3 shows the hypothesis is confirmed; satisfying the perceived needs of donors is the most important goal that affects whether or not Israeli moderate users select litigation. (As I did with regular users I asked moderate users also to rank the goals against one another on a 1-5 scale. (Here too I calculated the total score for each goal and computed the mean).

FIGURE 3

Goals That Affect Moderate Users



Interviews with moderate users provide useful information on why they are so interested in satisfying their donors.¹⁸⁵ For example, Naamat, the organization known as the Women Workers' Network until 1976, is a moderate user of litigation. A lead attorney for Naamat, whom I shall refer to as Natalie, noted that her organization uses litigation as a tactic to advance the rights of women both in the workforce and at home. Naamat is active in

¹⁸⁵ Interviews with several sources, the names and locations are confidential. (75% of moderate users said that donor satisfaction is most important. Contrast this finding with the fact that no regular user or no infrequent user cited donor satisfaction as most important. Also, I recognize that for Israeli moderate users, I do not break down the means for women's groups and the civil liberties group. The reason is because several moderate users asked that I not disclose their responses; publishing such disaggregated data I ultimately decided would have jeopardized the confidentiality of those groups seeking to have their identities protected).

fighting wage inequality, promotion barriers, and sexual harassment in the work environment. In family matters, the organization counsels and educates women who are victims of domestic violence or who live in an abusive family situation. On occasion the group submits petitions to the rabbinical courts on behalf of women seeking divorce. The group also takes special interest in legally assisting women in civil court when property is being divided between a divorcing couple.¹⁸⁶

As in the case with the other organizations, a variety of factors affect when Naamat will and will not employ litigation as policy tactic. However, the donor-satisfaction goal is particularly crucial for this group when deciding whether or not to litigate. Natalie noted that she and the other Naamat leaders do not ever seriously consider stopping the use of litigation. Donors and members of Naamat expect the leaders to use litigation as a policy tactic. According to several officials with whom I spoke, including Natalie, contributors who support Naamat like the fact that the group engages in a variety of tactics. Furthermore, if these donors sensed that Naamat was not employing every possible technique to further the group's cause—including using the legal channels on an occasional basis—then there was a perceived fear among the group's leaders that donors would cease their financial support.

I wondered why Naamat, a group with such a long history, worries so much about pleasing donors. Does not the group enjoy a strong financial base of support? After all, the group is one of the oldest in Israel. But as I was told, Naamat today is an organization very different than even ten years ago. In the past Naamat was not seen as an adversarial organization that forcefully promoted women's rights. Only recently has this transformation occurred. Naamat, in a sense, is a very new group with a newer agenda and newer financial supporters. For this reason the group is highly sensitive about its donors' wishes. An example provided by Natalie

¹⁸⁶ Interview with Natalie, Tel Aviv, Israel (Sept. 28, 1998)(It is important to clarify that while rabbinical courts determine who may marry and who may divorce, other issues, such as the division of property in a divorce, are handled by civil courts).

highlights this point. In the early 1990's some of Naamat's more important financial supporters began to scale back their contributions.

As a result Naamat actively searched for other donors to make-up for this lost funding. Eventually newer contributors decided to support the group, but these funders informed Naamat's leaders that they were interested in raising public awareness about sexual harassment in the workplace. The donors expressed a desire to use a range of tactics (including litigation) to accomplish this objective. As it happened, later that year the group launched a comprehensive tactical campaign against sexual harassment. As part of this effort it brought suits against private employers and state agencies thought to be guilty of sexual harassment. As the Naamat official remarked, "we followed the lead of our donors both because we had to and because we wanted to; many people did learn about this issue, and many women benefited in the process."¹⁸⁷

The other moderate users also noted that they pay significant heed to donors' wishes. Because these groups tend to rely on the financial support of only a few donors, leaders acknowledged that they do not have as much autonomy as they would like in devising tactical strategies. According to other moderate users I interviewed, litigation is viewed by many in Israeli society as a conflict-oriented, divisive tactic; as such the financial donors of moderate users have stated they do not wish litigation to be used as a regular tactic. However, at the same time several of these same donors have also told the group leaders that they are interested in seeing litigation used on some occasions. Specifically in those cases when no other group will litigate on behalf of these particular moderate users, donors have told group elites not to fear defending themselves in court. As the attorney for

¹⁸⁷ *Id.*

one group mentioned to me, "it is a real balancing act that we have to follow."¹⁸⁸

Again, like I did for Israeli regular users, I conducted a test on Israeli moderate users to determine whether or not the difference between the most important goal cited (donor satisfaction) and the rest of the goals was statistically significant. The results, which are presented in the Appendix B, confirm that in almost every comparison there are statistically significant differences between the donor satisfaction variable and each of the other goals. In other words, the qualitative and quantitative data indicate that the wishes and concerns of financial donors are indeed important for these groups that engage in litigation on a moderate basis.

3. Infrequent Users

For those groups that I qualify as infrequent users, 50% are women's groups, 25% are environmental groups, and 25% are civil liberties groups. Table 6 lists the infrequent users in Israel.

Table 6. Infrequent Users of Litigation in Israel

<i>Group</i>	<i>Type</i>
Woman to Woman	Women's Group
Women of the Wall	Women's Group
Society for the Protection of Nature in Israel (SPNI)	Environmental Group
Menuha Nakohna	Civil Liberties Group

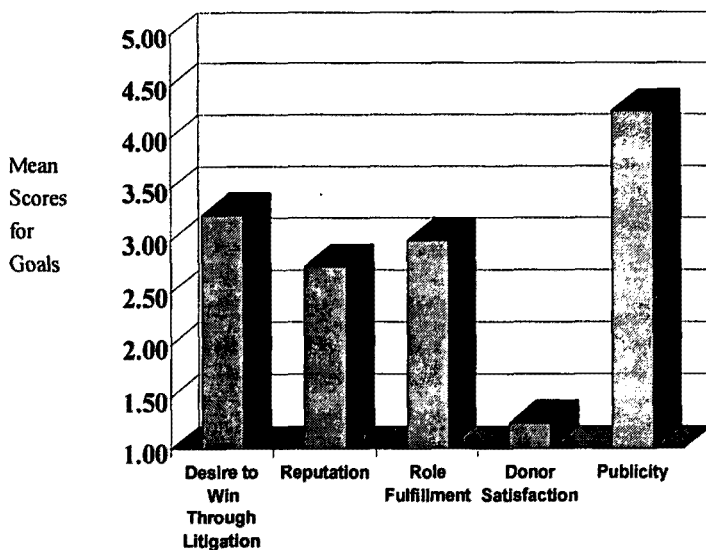
Below figure 4 shows that the hypothesis is confirmed; the publicity goal is most important for whether or not infrequent users litigate. (As I did with regular users and moderate users I had

¹⁸⁸ Interview with anonymous source, attorney from organization that moderately uses litigation, in Tel Aviv, Israel (Oct. 14, 1998). Identity of group and individual protected upon request.

infrequent users rank the goals against each other on a 1-5 scale. I then calculated the total score for each goal and computed the mean).

Figure 4

Goals That Affect Infrequent Users



This finding also confirms past research that suggests certain groups will use the legal process as a means of generating attention for a particular cause or issue.¹⁸⁹ Clearly the high priority placed on the publicity goal by infrequent users is a finding that cannot be ignored.

¹⁸⁹ See, MCCANN, *supra* note 134, at 61-64; EPSTEIN, *supra* note 1 at 154-55 (1985). Note, 75% of infrequent users stated that the donor satisfaction goal was the most important; no regular or moderate user ranked this goal as most important. Also, for the same reason as stated in *supra* note 185, I do not list the individual scores for each set of groups.

Consider, for example, the Society for the Protection of Nature in Israel (SPNI). SPNI is the only other environmental group in this study to use litigation. In its nearly fifty-year history, SPNI has used litigation as a policy tactic less than twenty times.¹⁹⁰ The lack of turning to litigation seems surprising, especially given the fact that SPNI won one of the most famous environmental litigation cases against the government in the country's history.¹⁹¹ SPNI, however, began as an organization that was very much in sync with the government's *Zionist Land Ethos* policy. This policy essentially called on Israelis to protect the environment, so long as their actions did not conflict with the nationalist goals of the state (which included industrializing the society, securing the country's borders, and keeping the country open to all Jews who sought refuge). For many years, SPNI simply preached a harmonious message of cherishing the land and purposely did not interfere with state ambitions.¹⁹²

SPNI experienced a change in direction during the late 1980's and early 1990's. The growth in post-material values¹⁹³ along with imported American ideas towards the environment are thought to have impacted the behavior of SPNI.¹⁹⁴ Since then the group has moved in a more aggressive direction to challenge specific government actions. However, because of its history and the fact that it derives a percentage of its budget from the state,

¹⁹⁰ Morag-Levine, *Insiders, Outsiders*, *supra* note 100, at 19. Interview with a prominent leader in group who wished to be referred to as Hanna, Jerusalem, Israel (Oct. 13, 1998).

¹⁹¹ *Id.* In this particular case, the group received a court order blocking the construction of a potentially environmentally hazardous radio transmission station that was to broadcast to southern republics of the former Soviet Union. The court refused to allow the project to continue until the environmental impact analysis was revised along the lines set out by the court. During the period of delay caused by the case, the U.S. decided to cancel the project, noting that the reasons were unrelated to the environment or to the litigation.

¹⁹² Interview with SPNI leader named "Hanna," *supra* note 190.

¹⁹³ Yishai, *supra* note 26, at 156-57.

¹⁹⁴ Morag-Levine, *Insiders, Outsiders*, *supra* note 100, at 11.

many other environmental activists are suspicious about whether or not SPNI is really independent.

Grassroots activities, public awareness campaigns, and informal political lobbying are the most common tactics used by SPNI. Litigation, however, remains a tactic that the group is hesitant to deploy. A leader interviewed for this project stated that SPNI does not have an in-house staff of attorneys who can represent the group in court on a regular basis. Thus, it must hire outside counsel which results in an expense that the group is not in a position to afford.¹⁹⁵

Furthermore, according to this official, while SPNI has moved away from being "in bed with the government,"¹⁹⁶ the organization does not necessarily wish to have a hostile relationship with those in power. SPNI has historically been a group that works towards reconciliation and compromise. There is a sense among the SPNI leadership that if litigation were employed too often, the group may then develop a negative image or reputation; something it seeks to avoid.¹⁹⁷ SPNI has spent decades fostering a relationship with the state. Although there has been some disagreement with the state over the years, the belief among many leaders is that employing litigation more regularly would jeopardize, if not sever, the ties the organization has with important government contacts.

In addition, many in SPNI's leadership recognize that Dan Fisch's organization, Adam Teva V'Din, is the most effective environmental litigation group in the country. SPNI is aware that if a contentious environmental law matter arises, Adam Teva V'Din is more than likely to become involved in the case. For this reason, SPNI oftentimes will refrain from participating as a litigator, simply because there is someone else already doing the job.¹⁹⁸

¹⁹⁵ Interview with "Abe," leader within SPNI organization, *supra* note 170.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Note, Dan Fisch expressed annoyance at SPNI's constant lack of interest in participating with his organization to fight the state on particular legal cases. He cited the important highway transportation case mentioned above, that his group lost, as one instance where an alliance between the two

Also, there is pressure from a number of influential members within SPNI not to use litigation as a policy tactic.¹⁹⁹ Noga Morag-Levine discovered this in her work on SPNI. As she notes, there is a “lingering ambivalence on the part of some [members] within SPNI”²⁰⁰ towards this specific strategy. For example, there are a number of lay constituents that join SPNI for the purpose of working on grassroots activities. While these constituents know that the group is engaged in some institutional tactics (such as lobbying) they are not interested in seeing SPNI devote substantial amounts of time and effort towards litigation.²⁰¹

Even with all of these reasons, the publicity goal in my taxonomy was still cited as the most important reason why SPNI does not use litigation on either a regular or moderate basis. Group leaders, very simply, do not see this tactic as effectively promoting the group’s message to the public. The other, above-mentioned tactics are thought best to convey SPNI’s mission and purpose. Furthermore, because SPNI is the most well-known and oldest environmental organization in Israel, there is not a feeling among the leaders that the group needs to litigate for the purposes of gaining publicity.

Interestingly, for the same reason that SPNI mainly does not engage in litigation, there are times when the group believes **for certain issues** going to court is the best way to educate and arouse public awareness. Understandably some may be baffled by this seeming paradox. But upon further explanation, the rationale seems quite logical. According to the high-ranking SPNI official

groups may have affected the outcome. According to Fisch, had SPNI signed on as a co-petitioner with Adam Teva V’Din in this case, the government, because of its past relationship with SPNI, might have considered scaling back its environmentally damaging highway project. Interview with Dan Fisch of Adam Teva V’Din, *supra* note 168.

¹⁹⁹ Interview with Abe, leader within SPNI organization, *supra* note 170.

²⁰⁰ Morag-Levine, *Insiders, Outsiders*, *supra* note 100 at 19.

²⁰¹ Interview with Abe, leader within SPNI organization, *supra* note 170. In fact, SPNI may be characterized as more of a conservation organization, with its biggest emphasis being on preserving nature trails and promoting guided hikes.

whom I interviewed, while the organization is the country's oldest and best-known (and therefore not thought of as needing publicity), some of the group's more recent environmental causes are quite new and unfamiliar to much of the public. And while SPNI prefers to organize and coordinate public awareness campaigns to educate citizens on such new and often complicated issues, these efforts take vast amounts of time, energy, and planning. Hence, when the group believes an issue needs to be immediately brought to the public forefront, it will seriously consider litigation as an option. As the official stated, "litigation can be a quick, easy way of bringing attention to a [newer and less familiar] cause that needs to be addressed."²⁰²

* * *

The discussion to this point has focused on what goals are most important for the three different types of users. The particularly surprising finding is that the reputation goal, rather than the hypothesized utilitarian goal, is most important for regular users. In the next section we turn our attention to examining whether the relationship between each of the goals and the frequency of litigation is positive or negative. Otherwise put, the next section will test the following (above-mentioned) hypotheses:

- Whether a group that places more importance on the utilitarian goal will be likely to litigate more frequently (testing for a positive relationship);
- Whether a group that places more importance on the reputation goal will be likely to litigate more frequently (testing for a positive relationship);
- Whether a group that places more importance on the role fulfillment goal will be likely to litigate more frequently; (testing for a positive relationship);

²⁰² *Id.* Please see Appendix C for the results of the paired samples test on infrequent users. Unlike the results for regular and moderate users, the paired samples results for infrequent users need more interpretation as two of the comparisons are statistically significant.

- Whether a group that places more importance on the donor satisfaction goal will be likely to litigate more frequently (testing for a positive relationship); and
- Whether a group that places more importance on the publicity goal will be likely to litigate less frequently (testing for a negative relationship).

F. Applying Theory to Relationship Data—Employing a Poisson Regression Analysis

As we know from our earlier discussion, I determine the frequency of litigation for each group on the basis of how many cases the group litigates per year. In order to test whether the relationship between each goal and the frequency of litigation is positive or negative, I use a statistical model known as a poisson regression analysis.²⁰³ During the interviews, I had each of the interest group policy makers place a level of importance on each goal independently of one another. Each respondent was able to select from the following choices: very important; important; slightly important; not important. I also test for whether resources

²⁰³ I use a poisson regression analysis because of the fact that the frequency of litigation (my dependent variable) is based on a raw count of the cases each group litigates per year. In statistical terms this raw count is known as a "count variable." (A count variable is assumed not to be normally distributed). Some may contend that instead of a poisson regression analysis, a general negative binomial regression analysis is the more appropriate model. (It is important to keep in mind that a poisson regression is a special type of negative binomial regression). I report and discuss the pluses and minuses of using a negative binomial regression in Appendix D. For an extensive discussion on the use of these procedures, see, Gary King, *Statistical Models for Political Science Event Counts: Bias in Conventional Procedures and Evidence for the Exponential Poisson Regression Model*, 32 AM. J. OF POL. SCI. 838-863 (1988). For further discussion on this topic, see, Gary King, *Variance Specification in Event Count Models: From Restrictive Assumptions to a Generalized Estimator*, 33 AM. J. OF POL. SCI. 762 (1989); Gary King, *A Seemingly Unrelated Poisson Regression Model*, 17 SOC. METHODS & RES. 235 (1989); Gary King & Curtis Signorino, *The Generalization in the Generalized Event Count Model, with Comments on Achen, Amato, and Londregan*, 6 POL. ANALYSIS 225 (1996).

affect how frequently litigation is used.²⁰⁴ As for assessing the relative importance of institutional accessibility, I could not include this in the poisson regression analysis because of the lack of variation on this variable. I thus assume that institutional accessibility matters, and consequently I hold this variable constant. In referring back to our earlier discussion, however, it is clear that this variable alone cannot fully account for whether or not groups will litigate.

Below table 7 reveals the results of the poisson regression analysis.

Table 7. Poisson Regression Results on Goals and Resources

(Entries are Poisson Regression Coefficients with Standard Errors in Parentheses)

Factors	Israel (Coefficients)
Utilitarian (Desire-to-Win) Goal	1.33**** (.22)
Reputation	1.44**** (.18)
Role Fulfillment	.24** (.12)
Donor Satisfaction	.54**** (.12)
Publicity	.01 (.13)
Resources	-.06 (.18)
Constant	-7.76**** (.99)
Goodness of Fit chi square	166.53 df = 32, p < 0.00
LR chi square (6)	340.45 p < 0.00
Pseudo R-Square ^a	.62
N ^b	39

* = p < .10
 ** = p < .05
 *** = p < .01
 **** = p < .001

²⁰⁴ I measure resources by using a blunt measure of this variable—financial budget. (I obtained the confidential financial data during the interviews. In some cases leaders even provided me with annual financial reports).

^a Poisson regression does not yield R-squared statistics as seen in typical linear regression models. The pseudo R-square is provided in order to shed light on the variance explained. The maximum value of this statistic does not exceed 1.

^b The n in table 7 is based on the thirteen different types of users listed in tables 4, 5, and 6 as well as twenty-six groups that were identified as non-users of litigation. For a discussion of how the groups were selected, see part two.

The results show that the hypotheses made on four of my five goals are confirmed. However, perhaps most interestingly, the resource variable is not statistically significant. This finding supports Yoav Dotan's position that because the burdens for entering into the legal process in Israel are low, resources do not significantly affect whether or not interest groups litigate.²⁰⁵ As for the individual goals, as predicted, there is a positive relationship between the utilitarian goal and the frequency of litigation. As the desire for obtaining policy results via litigation becomes more important for a group, it will be more likely that the organization will enter the legal process on an on-going basis.

There is also a positive relationship between the reputation goal and the frequency of litigation; the more an Israeli interest group wishes to establish or maintain a reputation for being involved in litigation, the higher the probability that the organization will use litigation as a public policy tool. The hypothesis that there is a positive relationship between the role fulfillment goal and the frequency of litigation is confirmed as well. The more pressure a group feels from partners within its policy network to fulfill the role of being a litigating organization, the more likely that group will litigate. Finally, the hypothesis on the donor-satisfaction goal is confirmed; the more that donor-satisfaction is valued by Israeli interest groups, the higher the probability that litigation will be more frequently used as a policy tactic. (The hypothesis that there is a negative relationship between the publicity goal and the frequency of litigation is not confirmed in Israel. Here, the publicity goal is not statistically significant at any of the levels of significance).

²⁰⁵ Dotan, *supra* note 7 at 323.

Clearly, the conditions affecting the decision-calculus of Israeli interest group leaders are nuanced and complex. Both the quantitative and qualitative data I provide show that not only do the goals of interest group leaders matter but that decisions on whether or not to use the courts are affected by simply more than resources or institutional factors.

V. CONCLUSION

The sheer increase in the number of women's groups, environmental groups, and civil liberties/civil rights groups in Israel is a relatively new phenomenon. The Israeli state still remains one that is party-dominated, but during the course of the past two decades the political space has opened for other non party-based groups to enter. The types of tactics interest groups use to advance their goals vary both across and within policy sectors. As we have seen, the tactic of litigation for public interest organizations, in particular, is used by 44% of women's groups, 13% of environmental groups, and 50% of civil liberties/civil rights groups.

Several observers contend that litigation by these Israeli public interest groups continues to increase. It is true that compared to fifteen years ago more groups are litigating in Israel today. But as I have shown the standard explanations usually given for why Israeli groups do or do not litigate are incomplete. Certainly the fact that groups in Israel have relatively easy access to courts has facilitated the litigation process for some groups. The increase in resources groups have seen since the mid-1980s is a significant development as well. However, as my study indicates, these two theories alone cannot fully explain when Israeli groups will and will not select this tactic for social policy purposes.

I have argued throughout this article that aside from institutional factors and resources, interest group leadership goals also affect not just if, but how frequently, organizations litigate. For example, groups that regularly use litigation seriously contemplate the implications such a decision will have on their reputation. For those groups that use litigation on a moderate basis,

donor-concerns play a key role in whether or not organizational-elites opt for this tactic. And groups that infrequently use litigation deeply consider the type of publicity that might be gained before venturing down the legal path.

There are indeed several larger lessons from my findings on Israeli organizations that should be of interest to those who study, in particular, American legal mobilization. First, my data illustrate that there is much more to the decision-making calculations of elites than external, structural factors or resource-possession. Rather, the ideas, interests, expectations, and goals of group-leaders are invaluable to how organizations act and the types of policies they pursue. Such ideas and goals of leaders serve as the backbone and life-blood of a group. They shape and influence how a group is perceived and how it perceives itself. The fact that groups—Israeli, American, or otherwise—may or may not opt to participate in litigation may be more reflective of these ideas and goals of group leaders than any institutional or resource factor.

Second, the study also has potential implications for American public officials and those in government who interact with groups on a regular basis. The study provides such officials with better information on what affects whether or not groups use the courts as a policy tactic. Government officials who wish constructively to engage with organized interests—rather than potentially doing battle with them in court—may be in a better position to craft or devise policies that foster consensus. As James Q. Wilson's classic piece reminds us, it is imperative for those in civil service who work on policies affecting organized interests to remember that group-leaders face a variety of constraints and pressures that influence their tactical decisions.²⁰⁶

Finally, this study also has normative implications for a larger theoretical debate that is currently on-going in the United States—namely whether or not active legal participation is good for a society, and for that matter good for democracy. There are those who decry the tactic of using courts—rather than say the legislative arena—as a means of achieving public policy

²⁰⁶ James Q. Wilson, *The Bureaucracy Problem*, 6 PUB. INT.3, 4-9 (1967).

objectives.²⁰⁷ By their nature courts—at least unelected courts—tend to be institutions that are typically insulated from majoritarian pressures. Thus judicial decisions that affect public policy have the potential for being undemocratic in nature. Mary Ann Glendon, for example, has argued that excessive reliance on lawyers and judicial policy-making subverts the democratic process.²⁰⁸ Others too have repeatedly derided the strategy of using courts as a means to redress substantive social policy concerns.²⁰⁹ To these observers

²⁰⁷ See e.g., Victor Schwartz, Mark A. Behrens, & Leach Loaber, *Federal Courts Should Decide Interstate Class Action: A Call for Federal Class Action Diversity Jurisdiction Reform*, 37 Harv. J. ON LEGIS. 483, 507 (2000). (calling, in particular, on class action lawsuit reform and noting that currently class action lawsuits have the potential for usurping the role of legislatures).

²⁰⁸ See generally, MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISES IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* (1994).

²⁰⁹ The literature on this subject is vast. For a selected set of noteworthy pieces, see generally, Kelly Flaherty, *Dan Quayle: Lawyers are the Root of All Social Evil*, RECORDER (S.F.), May 20, 1999 at 6; WALTER K. OLSON, *THE LITIGATION EXPLOSION: WHAT HAPPENED WHEN AMERICA UNLEASHED THE LAWSUIT* (1991); William Buckley, *Invisible Hand Tripped up by Burden of Lawyer Glut*, AUSTIN AM.-STATESMAN, Oct 30, 1991, at A 19. For a scholar who makes even a larger claim that excessive use of courts seriously hurts economic productivity, see, Stephen P. Magee, *The Optimum Number of Lawyers: A Reply to Epp*, 17 L. & SOC. INQUIRY 667 (1993). See also, Mancur Olson, *Do Lawyers Impair Economic Growth?*, 17 L. & SOC. INQUIRY 625 (1993) (arguing that within a country indeed there exists an optimal level of lawyers). For those who reject the premises that lawyers are harmful to society and that there is excessive litigation in the United States, see, Charles Silver and Frank B. Cross, *What's Not to Like About Being a Lawyer*, 109 YALE L. J. 1443 (2000) (reviewing ARTHUR L. LIMAN, *LAWYER: A LIFE OF COUNSEL AND CONTROVERSY* (1998)); Marc Galanter, *The Faces of Mistrust: The Images of Lawyers in Public Opinion, Jokes and Political Discourse*, 66 U. CIN. L. REV. 805 (1998); Marc Galanter, *An Oil Strike in Hell: Contemporary Legends About the Civil Justice System*, 40 ARIZ. L. REV. 717 (1998); Marc Galanter, *Predators and Parasites: Lawyer Bashing and Civil Justice*, 28 GA. L. REV. 633 (1994); Charles Epp, *Do Lawyers Impair Economic Growth?*, 17 L. & SOC. INQUIRY 585 (1993); Frank B. Cross, *Law versus Economics?*, 17 L. & SOC. INQUIRY 653 (1993).

there is a fear of "robed lawyers" becoming super-legislators, unaccountable in their actions and dangerous to the entire democratic structure.

And then there is another group of scholars who believes that even if results are derived from active legal participation, such benefits are only marginal. According to this view, irrespective of how well-reputed, authoritative, or accessible courts are, ultimately judicial decisions have minimal impact on affecting public policy or producing social change.²¹⁰ These observers argue that courts by themselves cannot provide direct, tangible rewards to those seeking redress. Gerald Rosenberg, for example, has urged those interested in making substantive social change to rely on support from other institutions that possess both enforcement and financial powers.²¹¹

Yet, in my view, both these sets of claims are quite limiting in that they assume obtaining favorable judicial decisions are somehow the only goal of those who participate in the legal process. Clearly my findings suggest that groups do not view participating in the legal process solely in this manner. When it comes to pursuing action through the courts, the attitudes, ideas, and goals of group—which I believe, are affected by a combination of institutional and cultural factors—are varied, subtle, and much more complex than what is typically noted. Participation through the legal process can offer new ideas or perspectives to an issue. Legal participation can help shape public discourse and frame debates. Furthermore, it can serve as an effective method for alerting, in the words of David Truman, "potential groups"²¹² of inequities and injustices that exist. Even unfavorable actions by courts can trigger important legal and non-legal responses by those at the grassroots level, and such responses can eventually lead to more fair, equitable, and democratic social policy outcomes.

²¹⁰ See, Robert Dahl, *Decision-Making in a Democracy: The Supreme Court as a National Policy Maker*, 6 J. PUB. LAW 279 (1957) (For a classic discussion of this argument).

²¹¹ See, GERALD ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991).

²¹² DAVID TRUMAN, *THE GOVERNMENTAL PROCESS* 52 (1951).

Therefore, my evidence leads me to conclude that active participation in the legal process can be both productive and good for democracy. For those countries that are making the transition to democracy and are looking to the United States legal system as a guide, this lesson is particularly important. As my study has shown, constructed properly, courts can serve as a key avenue of political participation for individuals and groups who might otherwise not be recognized.

APPENDIX A

For regular users, I conducted a paired samples test in order to determine whether or not the difference between the most important goal (reputation) and the rest of the goals cited in figure 2 was statistically significant. Recall that each group interviewed was asked to rank the five goals in order of importance against one another. (5 being the most important goal while 1 was considered the least important goal). This is referred to as a "repeated measures design." The correct way to calculate statistical significance here is to compute the difference between the rank for each group, and then to calculate the mean of the difference. (The mean of the difference was identical to the difference in the means). Using a paired samples test I then tested the hypothesis that the mean difference was significantly different from zero using a t-test. Below table A1 provides the results of this test.

Table A1. Paired Differences—Regular Users

Most Important Goal (Reputation) v. Other Goals	Mean Difference	Std. Deviation	T Score	Stat. Significance
Reputation Goal v. Utilitarian Goal	1.200	.4472	6.000	.004
Reputation Goal v. Role Fulfillment Goal	2.000	1.871	2.390	.075
Reputation Goal v. Donor Satisfaction Goal	3.000	1.225	5.477	.005
Reputation Goal v. Publicity Goal	1.800	1.643	2.449	.070

Table A1 highlights how the difference between the most important goal for regular users (i.e. reputation) and the rest of the goals is statistically significant. Statistical significance is present at a .05 level between the reputation goal and the utilitarian goal and between the reputation goal and the donor satisfaction goal. Statistical significance is present at the .10 level between the reputation goal and the role fulfillment goal and between the reputation goal and the publicity goal.

APPENDIX B

For moderate users of litigation, I employ the same type of statistical techniques used in Appendix A. Table B1 provides the results.

Table B1. Paired Differences—Moderate Users

Most Important Goal (Donor Satisfaction) v. Other Goals	Mean Difference	Std. Devia- tion	T Score	Stat. Signifi- cance
Donor Satisfaction Goal & Utilitarian Goal	.500	1.732	.577	.604
Donor Satisfaction Goal & Reputation Goal	2.250	.957	4.700	.018
Donor Satisfaction Goal & Role Fulfillment Goal	2.500	1.291	3.873	.030
Donor Satisfaction Goal & Publicity Goal	2.250	1.500	3.000	.058

In examining the paired sample results regarding the donor satisfaction goal, we find that in all but one comparison statistical significance exists between this most important goal and the rest of the goals. The difference between the donor satisfaction goal and the utilitarian goal is not statistically significant for Israeli moderate users. The mean score of Israeli moderate users for the donor satisfaction goal is 4.50, while the mean score for the utilitarian goal is 4.00. Although the mean scores are numerically different, statistically there is no significant difference at either the .05 level or the .10 level. Nevertheless, in the three other comparisons statistical significance does exist and so the finding cannot be at all dismissed. The quantitative and qualitative data show that the wishes and concerns of financial donors are indeed important for these groups that engage in litigation on a moderate basis.

APPENDIX C

As with the case of regular and moderate users, a paired samples test was conducted on all infrequent users in order to determine whether or not the difference between the most important goal (publicity) and the rest of the goals cited was statistically significant. Table C1 displays the results.

Table C1. Paired Differences—Infrequent Users

Most Important Goal (Publicity) v. Other Goals	Mean Difference	Std. Deviation	T Score	Stat. Significance
Publicity Goal & Utilitarian Goal	1.000	2.160	.926	.423
Publicity Goal & Reputation Goal	1.500	.577	5.196	.014
Publicity Goal & Role Fulfillment Goal	1.250	2.630	.951	.412
Publicity Goal & Donor Satisfaction Goal	2.500	1.290	3.873	.030

Table C1 shows that in two of the four comparisons there is statistical significance. For Israeli infrequent users there is statistical significance at the .05 level in the difference between the publicity goal and the reputation goal and between the publicity goal and the donor satisfaction goal. However, there is no statistical significance in the difference between the publicity goal and the utilitarian goal or between the publicity goal and the role fulfillment goal. How then do we interpret these results? Clearly the qualitative data from the interviews indicate that for some

groups the publicity goal is determinative in whether litigation is selected, and thus the importance of this goal cannot be overlooked. But as with all good scientific research, perhaps the safest statement to make is that before we can have complete confidence on what type of impact this goal has on infrequent users, more sampling and testing are needed.

APPENDIX D

As stated in footnote 203, some may argue that the procedure best suited to determine the relationship between the goals and the frequency of litigation is to use a negative binomial regression. Below table D1 reports the results when a negative binomial regression—rather than a poisson regression—is run on the data.

Table D1. Negative Binomial Regression Results on Goals and Resources

(Entries are Negative Binomial Regression Coefficients with Standard Errors in Parentheses)

Factors	Israel (Coefficients)
Utilitarian (Desire-to-Win) Goal	1.78*** (.58)
Reputation	1.79*** (.68)
Role Fulfillment	.64 (.50)
Donor Satisfaction	.63 (.63)
Publicity	.78 (.48)
Resources	.69 (.53)
Constant	-15.19*** (4.95)
LR chi square (6)	30.38 $p < 0.00$
Pseudo R-Square ^a	.23
N ^b	39

* = $p < .10$
 ** = $p < .05$
 *** = $p < .01$
 **** = $p < .001$

^a Similar to a poisson regression analysis, a negative binomial regression analysis does not yield R-squared statistics as seen in typical linear regression models. The pseudo R-square is provided in order to shed light on the variance explained. The maximum value of this statistic does not exceed 1.

^b The n in table D1 is based on the thirteen different types of users listed in tables 4, 5, and 6 as well as twenty-six groups that were identified as non-users of litigation. For a discussion of how the groups were selected, see part two.

From table D1, we see that four of the results are similar to those reported in the poisson regression table. Like in the poisson regression table, here, resources are not statistically significant. Also similar to the poisson regression table, the utilitarian and reputation goals in the negative binomial table are statistically significant (although at a .01, rather than a .001 level of significance). And in both the poisson regression table and table D1 the hypothesis on the publicity goal cannot be confirmed. We do see differences between the two tables with respect to the role fulfillment and donor satisfaction goals. In the negative binomial regression table neither of these two goals are statistically significant.

Finally, some may contend that the negative binomial regression table is the correct model to use in this analysis because, unlike with poisson regression, a negative binomial regression takes into account both over and under dispersion.²¹³ Yet, as opposed to poisson regression, with a negative binomial regression, one loses an extra degree of freedom, and, furthermore, with the N being only thirty-nine, there is the potential for the results in table D1 to be considered unstable. Because of the question over which model is appropriate, I report and present the findings from both regressions for this study.

²¹³ The "alpha" here (which represents whether dispersion is present) is statistically significant. However, because the alpha is not significant at the .001 or .01 level, some may say that the dispersion is minor and thus a poisson regression model is satisfactory.

APPENDIX E

(Selected Questions Asked During Interviews)

I. Repeated Measure Design Questions:

(Testing Most Important Goal Hypotheses)

For Users of Litigation:

Can you rank, in order of importance (5 = most important; 1 = least important), which of the following affects whether or not your group litigates?

- a. Your group desires to achieve policy objectives through litigation
- b. Your group desires to have a reputation for being a litigating organization
- c. Your groups feels a responsibility to your policy partners to be a litigating organization
- d. Your group feels pressure from donors to litigate
- e. Your group desires to publicize a cause through the legal forum

II. INTERVIEW QUESTIONS THAT CAN BE CODED AND THEN MEASURED VIA POISSON REGRESSION

(Testing relationship hypotheses)

-How important is it for your group to achieve your policy objectives through the tactic of litigation?

A (4). Very important B (3). Important

C (2). Slightly Important D (1). Not Important

-How important is it for your group to have a reputation for being involved in litigation?

A (4). Very important B (3). Important

C (2). Slightly Important D (1). Not Important

-Is the pressure your group feels from others in your policy network to litigate a

A (4). Very important B (3). Important

C (2). Slightly Important D (1). Not Important

factor when considering what strategies to use

-How important is it to your donors that your group engages in litigation?

A (4). Very important B (3). Important

C (2). Slightly Important D (1). Not Important

- Does the fact that an issue may gain publicity through litigation play a

A (4). Very important B (3). Important

C (2). Slightly Important D (1). Unimportant

role in whether or not your group uses litigation as a policy tactic?
